SUPREME COURT OF THE UNITED STATES.

No. 96.

SAMUEL MAYER AND HENRY MAYER, APPELLANTS,

vs.

THE GALLIOT VENILIA, (EDDES, MASTER,) HER TACKLE, APPAREL, AND FURNITURE.

APPEAL FROM THE CIRCUIT COURT, U. S., FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

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[GIDEON, Print.]

S. Mayer and Brother
vs.
The Galliot Venilia.

Pleas before the honorable the judges of the circuit court of the United States, for the eastern district of Pennsylvania, in the third circuit, of October session, 1852, No. 6.

It is thus contained:

Pleas before the honorable John K. Kane, judge of the district court of the United States, in and for the eastern district of Pennsylvania.

It is thus contained:

Be it remembered, that on the fifth day of June, A. D. 1852, J. Hill Martin, esquire, one of the proctors of the said court, appears in open court, and presents the libel and complaint of Samuel Mayer and Henry Mayer, trading under the name, style, or firm of S. Mayer and Brother, against the Galliot Venilia, Hendrick Eddes, now or late master; which, being read and filed, is in the words following, to wit:

Paper book.

In the district court of the United States, for the eastern district of Pennsylvania.

To the honorable John K. Kane, judge of the district court of the United States, in and for the eastern district of Pennsylvania.

The libel and complaint of Samuel Mayer and Henry Mayer, copartners, comprising the firm of S. Mayer & Brother, of the city of Philadelphia, merchants, against the Dutch ship or galliot Venilia, (whereof Hendrick Eddes now is, or late was, master,) her tackle, apparel, and furniture; and against all persons intervening for their interest therein, in a cause of contract, civil and maritime. And thereupon said libellants *alleges* and articulately *propounds* as follows:

First. That on or about the 4th day of December, A. D. 1851, Messrs. C. Hemman & Co. shipped on board the said vessel, then lying in the port of Rotterdam, and bound to the port of Philadelphia, in good order, well conditioned, and free from damage, to be carried and transported in the said vessel to the port of Philadelphia, and there delivered to the libellants in like good order, one hundred and one cases, twenty-four casks, three packages, thirty-two bags, and one box of merchandise, in consideration of the payment of certain freight, (all and every dangers and accidents of the seas and navigation, of whatsoever nature or kind, excepted,) the said C. Hemman & Co. receiving therefor four bills of lading. A receipt and contract, whereby the said vessel, her tackle, apparel, and furniture, are charged for the performance of said contract. Copies of which are hereunto annexed.

Second. That the said vessel sailed from the port of Rotterdam, on or about the 13th day of December, 1851, for the port of Philadelphia, where she arrived on or about the 18th day of May, 1852, and now is; that said vessel having so arrived at the port of Philadelphia, discharged her cargo, and delivered to the libellants the said packages of merchandise, and the said libellants paid the freight stipulated thereon. That after the delivery of the said goods and merchandise, the same was discovered to have been damaged, and on an examination and special survey thereof, found to be utterly worthless to the libellants, having been damaged and totally destroyed by the unseaworthiness of the said vessel, and by the bad stowage and the want of proper dunnage thereof on board said vessel, and by the negligence, carelessness, improper conduct, and want of attention of the master, his mariners and servants, whereby the said packages of merchandise aforesaid became and are wholly worthless to these libellants, by not having been delivered (although no dangers and accidents of the seas and navigation, of whatsoever nature or kind, prevented) in good order, well conditioned, and free from damage, as by the said contract of affreightment was stipulated and agreed, whereby damage has been sustained by these libellants to the amount of three thousand dollars, for which they claim reparation in this suit.

Third. That the said vessel is a foreign vessel, and is taking in her cargo, and is about to leave the port of Philadelphia, and the United States, so that the libellants will be without remedy, unless by proceedings against said vessel, her tackle, apparel, and furniture.

Fourth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libellants pray that process in due form of law, according to the course of this honorable court in cases of admiralty and maritime jurisdiction, may issue against the said galliot or vessel Venilia, her boats, tackle, apparel, and furniture, and that all persons claiming any interest therein may be cited to appear and answer all and singular the matters aforesaid; and that this honorable court would be pleased to pronounce for the damages aforesaid, with costs; and that the said vessel may be condemned and sold to pay the same, and all parties intervening therefor condemned in costs; and that the said libellant may have such other and further relief in the premises as in law and justice he may be entitled to receive.

HENRY MAYER.

Sworn to and subscribed this 5th day of June, 1852, in open court.

THOMAS L. KANE,
Clerk district court, U. States.

Shipped, in good order and well conditioned, by Messrs. C. Hemmann & Co., in and upon the good ship called the Venilia, whereof is master, for this present voyage, Eddes, and now lying in this port, bound for Philadelphia:

× B & H
No. 3050 | 3103 } Sixty-five cases merchan'se,
7 3332 | 42 } containing 5625 ks.

Charges £ . × A GD $\frac{8 f 1 0}{15}$ Six cases merchandise, 715627

× SM ¼ Four " viz. 7 427 7

436 fh
17 c
305 ²
436
741 ²

being marked and numbered as in the margin, and to be delivered in the like good order and well conditioned at the aforesaid port of Philadelphia, (all and every dangers and accidents of the seas and navigation, of whatsoever nature or kind, excepted,) unto Messrs. S. Mayer and Brothers, 163 North Third street, Philadelphia, or to their assigns, he or they paying freight for the said goods, seventy-four dollars and twelve cents, and ten per cent. primage, U. States currency, with primage and average accustomed, and charges as in the margin. In witness whereof, the master or purser of the said ship has affirmed to five bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

To be taken out in — days after arrival, or to pay — shillings per day demurrage.

Dated in Rotterdam, 4th Dec., 1851.

Contents and weight unknown. Not accountable for damage.

(Signed) H. EDDES.

$1205 47

Shipped in good order and well conditioned, by Messrs. C. Hemmann & Co., in and upon the good ship called the Venilia, whereof is master for this present voyage, Eddes, and now lying in this port, bound for Philadelphia.

+ SM & B Twenty-four casks of merchandise Phd.

+ K $\frac{3693}{3704}$ Three packages cont'g 12 boxes, d

Charges £. + SM & B Ten cases gr. wt. 1677 ks. cont'g d Phd.

24 casks $1 p. 150 litre $50 00
12 boxes 23 ft. at 7 cts. 3 91
10 cases 212 36 04
$89 95

being marked and numbered as in the margin, and to be delivered in the like good order and well conditioned at the aforesaid port of Philadelphia, (all and every dangers and accidents of the seas and navigation, of whatsoever na-

ture or kind, excepted,) unto Messrs. S. Mayer & Brothers, 163 North Third, Philadelphia, or to their assigns, he or they paying freight for the said goods, eighty-nine dollars ninety-five cents, and ten per cent. primage, United States currency, with primage and average accustomed, and charges as in the margin. In witness whereof the master or purser of the said ship has affirmed to five bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

To be taken out in —— days after arrival, or to pay —— shillings per day demurrage.

Dated in Rotterdam, 5th December, 1851.

Contents unknown. Not accountable for damage, break and leakage.

(Signed) H. EDDES.

Shipped in good order and well conditioned, by Messrs. C. Hemmann & Co., in and upon the good ship called the Venilia, whereof is master for this present voyage, Eddes, and now lying in this port, bound for Philadelphia.

× M & B × P N 1 15 fifteen cases cheese, cont'g } ks.
× M × thirty-two bags peas, cont'g } ks.
× SM & B N 1 One case merchandise cont'g } ks.

Charges £.

56 fs. cheese, at 17	$9 52
39 m peas, at 50	19 50
6 fs. 1 case 17	1 02
	$30 04

being marked and numbered as in the margin, and to be delivered in like good order and well conditioned, at the aforesaid port of Philadelphia, (all and every dangers and accidents of the seas and navigation, of whatsoever nature or kind, excepted,) unto Messrs. S. Mayer & Brothers, 163, North Third street, Philadelphia, or to their assigns, he or they paying freight for the said goods, thirty dollars four cents, and ten per cent. primage, United States currency, with primage and average accustomed, and charges as in the margin.

In witness whereof the master or purser of the said ship has affirmed to five bills of lading, all of this tenor and date, one of which being accomplished, the others to stand void.

To be taken out in — days after arrival, or to pay — shillings per day demurrage.

Dated in Rotterdam, 6th December, 1851.

Contents unknown. Not accountable for damage.

(Signed) H. EDDES.

$12.

Shipped in good order and well conditioned, by Messrs. C. Hemmann & Co., in and upon the good ship, called the Venilia, whereof is master for this present voyage, Eddes, and now lying in this port, bound for Philadelphia.

× A S One box merchandise,
No. 1 Gr. weight 13 ks.

Disbursements £.

being marked and numbered as in the margin, and to be delivered in the like good order and well conditioned at the aforesaid port of New York, (all and every dangers and accidents *or* the seas and navigation, of whatsoever nature or kind, excepted,) unto Messrs. S. Mayer & Brothers, 163, North Third street, Philadelphia, or to their assigns, he or they paying freight for the said goods, fifty cents, and ten per cent. primage, United States currency, with primage and average accustomed, and disbursements as in the margin.

In witness whereof the master or agent of the said ship has affirmed to five bills of lading, all of this tenor and date, one of which being accomplished, the others to be void.

The goods to be taken out in — days after arrival, or to pay — shillings per day demurrage.

Dated in Rotterdam, 10th December, 1851.
Contents and weight unknown.

(Signed) H. EDDES.

MAYER & BROTHER vs. THE VENILIA. } Contract.

In the district court of the United States, in and for the eastern district of Pennsylvania. In admiralty.

And now, May 5th, A. D. 1852, the said libel of complaint is in open court presented by John H. Martin, esquire, the proctor for the libellant; and thereupon, the court having considered of the same, it is ordered and decreed, that process of law do issue according to the prayer of the said libellant in said libel of complaint set forth and contained, on compliance on his part with the rules of court in that behalf established; and that the stipulation, on the part of the impugnant, if such there shall be, be taken in the sum of three thousand five hundred dollars, to answer, abide by, fulfil, perform, and pay, &c., according to the law and practice of this court.

J. K. KANE,
Judge dist. court U. S., E. D. of Penn'a.

And stipulation being entered pursuant to said order, is as follows:

UNITED STATES, *eastern district of Pennsylvania.*

On this fifth day of June, A. D. 1852, and in the seventy-sixth year of the independence of the said United States, in open district court of the United States, personally appeared Henry Mayer and Mayer Gans, and, by stipulation in due course of law, acknowledged themselves to be indebted to the United States of America, for the use of all persons who may be interested in the premises, in the sum of two hundred (200) dollars, to be levied of their goods and chattels, lands and tenements, on condition that if the libellants in the above action shall pay all costs which by the decree, mandate, or practice of the court, they may become liable to pay, then this stipulation to be void and of no effect; otherwise to be and remain in full force and virtue, and execution to issue thereon forthwith for the amount of such costs, at the instance of any person interested as aforesaid.

HENRY MAYER,
M. GANS.

Taken, acknowledged, and subscribed, this 5th day of June, A. D. 1852. THOMAS L. KANE, *Cl'k, dist. court.*

Whereupon process being issued, is in the words following, to wit:

UNITED STATES, *eastern district of Pennsylvania, sct.*

John K. Kane, judge of the district court of the United States, in and [L. S.] for the eastern district of Pennsylvania, to the marshal of the same district, greeting.

You are hereby commanded, in the name and by the authority of the United States, forthwith to seize and attach the galliot or vessel called the Venilia, Hendrick Eddes, now or late master, together with all and singular her tackle, apparel, and furniture, as the same now are, and the same safely keep, to abide the final order and decree of this court, in a certain plea, civil and maritime, herein prosecuted against the said galliot, &c., by S. Mayer and Brother, Samuel Mayer and Henry Mayer, co-partners, trading under the firm of Mayer and Brother, libellants, for breach of contract, &c.; and you are further commanded, in the name and by the authority aforesaid, to cite and admonish the said master, and generally all others herein concerned, so that they be and appear before me, at a special session of this court, to be holden at the room of the district court, U. S., in the city of Philadelphia, on the eighteenth day of June inst., at eleven o'clock in the forenoon of the same day, then and there to show cause, if any they have, why the said galliot, &c., should not be condemned, &c., for the payment of the damages upon said breach of contract, &c.; and have you then there this writ.

Given under the seal of the said court at Philadelphia, this fifth day of June, A. D. 1852, and in the seventy-sixth year of the independence of the said United States.

THOMAS L. KANE, *Clerk, dist ct., U. S.*

On which said eighteenth day of June, A. D. 1852, being the day of the return of the said writ, the said marshal makes return thereof, in the words following, to wit:

"Attached the galliot Venilia, as by the within writ I was commanded, and posted a true copy of this writ upon the mast of the said vessel, in the presence of Isaac Duval, mate.

"So answers HENRY L. SMITH,
"Dept. U. S. marshal, E. D. Penn'a."

Afterwards, to wit, on the eleventh day of June, A. D. 1852, Hendrick Eddes appears in open court, and makes claim to the said galliot, in the words following, to wit:

And now Hendrick Eddes, intervening for the interest of G. Mauritz, of Dordrecht, appears before the honorable court, and makes claim to the said galliot, her tackle, apparel, and furniture, as the same are attached by the marshal, under process of this court, at the instance of Mayer and Brother; and the said Hendrick Eddes avers that he was in possession of the said galliot at the time of the attachment thereof, and that the person above named is the true and bona fide owner of the said galliot, and that no other person is the owner thereof; and he, the said Eddes, is master of the said galliot, and the true and lawful bailee thereof for the said owner; wherefore he prays to be admitted to defend accordingly.

H. EDDES.

Sworn to and subscribed, in open court, this 11th day of June, A. D. 1852.

THOMAS L. KANE,
Clerk dist. court.

And stipulation being duly entered, is in the words following, to wit:

UNITED STATES, *east'n dist. of Pennsylvania.*

Be it remembered, that, at a special district court of the United States, holden at Philadelphia, in and for the eastern district of Pennsylvania, on the eleventh day of June, A. D. 1852, and in the seventy-sixth year of the independence of the said United States, before the honorable John K. Kane, judge of said court, comes William Welsh, who, freely and voluntarily submitting himself to the jurisdiction of the said court, acknowledges himself to be indebted unto Samuel Mayer and Henry Mayer, co-partners, trading under the firm of Mayer & Brother, in the sum of three thousand five hundred dollars, lawful money of the United States, to be levied of the goods and chattels, lands and tenements, to the use of the said libellants; upon condition, that whereas a suit is now pending in the said court for contract, wherein the said Samuel Mayer and Henry Mayer, co-partners, are the libellants, against the galliot Venilia, and Hendrick Eddes, claimant:

Now, if the said claimant shall well and truly abide by all orders, interlocutory or final, of the said court, and of any appellate court in

which the said suit may hereafter be depending, and shall fulfil and perform the judgment or decree which may be rendered in the premises, and also pay all such costs and charges as shall be ordered and adjudged to be paid on his part, then this stipulation shall be void; otherwise in force, and execution may issue by virtue thereof at one and the same time, against any or all the parties to this stipulation.

WM. WELSH.

Taken, acknowledged, and subscribed, in open court, on the day and year above written.

THOMAS L. KANE,
Clerk D. C.

The above named William Welsh, being duly affirmed, deposes and says, that he is permanently a householder within this district, and that he is worth the sum of three thousand five hundred dollars, after payment of his just debts and liabilities.

And thereupon it is ordered that a writ of restitution issue to the marshal, directing him to restore the said galliot to the said claimant, upon payment to him of his costs, and the necessary expenses by him incurred; which said writ of restitution is in the words following, to wit:

UNITED STATES, *east'n dist. of Pennsylvania.*

[L. S.] John K. Kane, judge of the district court of the United States, in and for the eastern district of Pennsylvania, to the marshal of the same district, greeting:

You are hereby commanded to deliver and restore, unto Hendrick Eddes, the galliot or vessel called the Venilia, with her tackle, apparel, and furniture, or so much thereof as was lately, and is now, in your custody and possession, by virtue of a writ of attachment lately issued out of said court, at the suit of Mayer & Brother, libellants, sur contract; and how you shall have executed this writ make return to me, at a special session of said court, to be holden at the city of Philadelphia on the twelfth day of June, instant; and have you then and there this writ.

Given under the seal of the said court, at Philadelphia, this eleventh day of June, A. D. 1852, and in the seventy-sixth year of the independence of the said United States.

THOMAS L. KANE,
Clerk dist. court.

On which said twelfth day of June, A. D. 1852, being the day of the return of the said writ, the said marshal makes return thereof, in the words following, to wit:

I have restored the galliot Venilia to Hendrick Eddes, as by the within writ I was commanded. So answers

HENRY L. SMITH,
Deputy U. S. M., east'n dist. of Penn.

And Messrs. C. and J. Fallon, proctors in the said court, also come into the said court, and present the answer of Hendrick Eddes to the libel and complaint aforesaid; which, being read and filed, is in the words following, to wit:

To the honorable John K. Kane, judge of the district court of the United States, in and for the eastern district of Pennsylvania—in the admiralty.

The answer of Hendrick Eddes, master of the Dutch galliot Venilia, of Dordrecht, to the libel and complaint of Samuel Mayer and Henry Mayer, comprising the firm of Mayer & Brother, of Philadelphia, against the said galliot, her tackle, apparel, and furniture, and against all persons intervening for their interest therein in a cause of contract, civil and maritime, alleges and articulately propounds as follows:

First. That the galliot Venilia is owned by G. Mauritz, of Dordrecht, and that this respondent is the master of the same.

Second. That, on the fourth day of December, A. D. 1851, the said galliot, then lying in the port of Rotterdam, and being bound on a voyage to the port of Philadelphia, Messrs. C. Hemman & Co., of the said port of Rotterdam, shipped on board of said vessel certain goods and pieces of merchandise, for the carriage and delivery of which, at the said port of Philadelphia, the customary bills of lading were duly executed.

That this respondent believes that true copies of said bills of lading have been annexed to the libel aforesaid, but he prays that, for greater certainty in the premises, the libellants may be compelled to produce the originals upon the hearing of this cause. And this respondent further alleges, that said bills of lading set forth the only contract or agreement made or entered into respecting the transportation and delivery of said goods or merchandise.

Third. That said galliot sailed from the port of Rotterdam on the 13th day of December, A. D. 1851, and, at the time of her sailing, was a good, tight, and staunch vessel, being fully equipped and manned, and that the cargo of said vessel, including the goods and pieces of merchandise aforesaid, was well and carefully stowed by a competent and experienced stevedore.

That said vessel encountered severe and tempestuous weather, which lasted for many days.

That, on the 20th day of January, 1852, she was struck by a heavy sea, which carried away her bowsprit, and greatly injured her forward rigging.

That, on the 24th, the weather still continuing tempestuous, a very heavy sea broke on board the said galliot about amidships, carrying overboard the whole of the starboard bulwarks, and sweeping off one man, the cook of said vessel, who was drowned.

That said vessel suffered other and serious damage; and the stormy weather still lasting, and the vessel being much strained and leaking

badly, she was forced to put into the port of Falmouth, England, for repairs, where she arrived on the 30th day of January, 1852.

That, whilst in said port, at the request of Messrs. William Broad & Sons, Netherlands consuls, and agent to Lloyds and of this respondent, a survey and examination of her state and condition was had by surveyors duly qualified. That, in accordance with the recommendation of said surveyors, certain repairs were made and supplies furnished; by which, before continuing her intended voyage to the port of Philadelphia, she was rendered, in every respect, efficient and seaworthy.

That said galliot was detained at the port of Falmouth until the 2d day of March, 1852, and that, in consequence of this detention, and owing to the prevalence of adverse winds, she did not arrive at the port of Philadelphia before the 20th day of May next ensuing, it being more than five months since the day of her departure from the port of Rotterdam. That she commenced discharging cargo at Philadelphia on the 25th day of said month, and so continued until the 29th day of the same month, when she was fully discharged.

That the goods and merchandise of the said libellants were removed from said vessel by themselves, or by their agents, and the freight due thereon paid.

That abundant opportunity was afforded to the libellants for the inspection and examination of the said goods and merchandise prior to their removal as aforesaid, and that no complaints were made by them that the same were in any way damaged; and that the first notice of any such allegation on the part of said libellants, received by said respondent, was after the attachment of his vessel, on the 5th day of June, 1852, by virtue of the process of this honorable court, and more than one week after the complete discharge of the cargo as aforesaid.

That this respondent is informed, and verily believes, that the goods and merchandise so delivered to the libellants, have been sold at public sale; but that this respondent did not, in any way, receive, prior to such public sale, information as to when and where the same was to be held.

That it is not true, that after the delivery of said goods and merchandise to the libellants, the same were found to be utterly worthless.

That it is not true, as is alleged in said libel, that said goods and merchandise have been damaged and totally destroyed by the unseaworthiness of the said vessel, and by the bad stowage and want of proper dunnage thereof on board said vessel, and by the negligence, carelessness, improper conduct, and want of attention of this respondent, his mariners, and servants.

But that if the said goods and merchandise have in any way deteriorated or suffered damage, such deterioration or damage is owing, and to be attributed, either to the great stress of weather to which the said Galliot was exposed prior to her arrival at Falmouth, as aforesaid, or to the effects of a long and protracted sea voyage.

Fourth. That all and singular the premises are true; in verification whereof, if denied, this respondent craves leave to refer to the depositions and other proofs to be by him exhibited in this cause.

Wherefore he prays that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellants in costs, and otherwise right and justice to administer in the premises.

H. EDDES.

Sworn to and subscribed before me, this 12th June, 1852.

J. BURCHARD,
U. S. Commissioner.

Whereupon the said libellants reply generally.

Libellants' depositions.

Mr. H. M. Philips. I offer in evidence the four bills of lading dated at Rotterdam, 4th December, 1851,
5th December, 1851,
6th December, 1851,
10th December, 1851;
And which constitute the contract between the parties.

Harrison Hall, for libellants, is sworn.

By Mr. H. M. Philips:

Question. You are a surveyor of damaged goods appointed by this court?

Answer. Yes, sir.

Question. Did you examine for Messrs. S. Mayer & Brother any goods imported in the galliot Venilia?

Answer. Yes, sir.

Question. Be pleased to state to the court if you filed a written certificate of the result of your survey.

Answer. Yes, sir.

Question. State to the court when you examined.

Answer. It was on the third of June.

Question. Where did you go?

Answer. To Messrs. Mayer's store, 263 north Third street.

Question. What did you examine?

Answer. I cannot state from recollection, except from a copy of the report; there was a quantity of cheese, herring, and segars.

Question. Any peas?

Answer. Yes, sir.

Question. Can you tell, to the best of your judgment, knowledge, and belief, what was the per centum of damage on the segars?

Answer. I think it was 50 per cent.

Question. On the cheese?

Answer. The cheese, I believe, was reported a total loss.

Question. You considered it of no value?

Answer. Of no value.

Question. The peas, sir?

Answer. The peas, I believe, were 15 per cent.

Question. The herring and anchovies?

Answer. I believe were 20 or 25 per cent., I do not know exactly.

Question. You have had a good deal of experience, have you?

Answer. Yes, sir.

Question. In your judgment, what occasioned the injury to either or all of these articles?

Answer. They were from being wet with salt water, or being a long time on the ship, which was in a wet condition, I conceive, from the appearance.

Question. From the appearance of the goods, how were they injured?

Answer. I suppose they were injured some by actual contact with the water, and others by the dampness of the hold in the vessel; from salt water in the hold.

Question. Were they in a merchantable condition?

Answer. No, sir.

Question. None of them?

Answer. No, sir.

Question. What did you recommend?

Answer. We recommended that they be sold at public sale.

Question. Can you state whether the cheeses, in their condition, were unwholesome?

Answer. The cheese certainly was very offensive.

Question. (Showing the witness a certain instrument.) Is that the certificate filed by you?

Answer. That is the original certificate filed in this court under a special writ of survey.

Question. Did you examine the galliot, or go and see the ship?

Answer. No, sir. We were not on board the ship.

Question by Mr. C. Fallon. Where did you make this survey?

Answer. At Mr. Mayer's store, in Third below Willow.

Question. On what day, sir?

Answer. I think it was the third of June; the report states it; the report was made on the 4th, and sworn to on the 5th.

Question. Who was present when you made this survey?

Answer. Captain Gallager and Mr. Mayer, the consignee of the goods.

Question. Who else?

Answer. There was a gentleman, Mr. Sherrerd, who accidently came in; there were a number present whom I do not know.

Question. Was the master of the vessel there?

Answer. I do not know.

Question. Was the consignee of the vessel, Mr. Welsh, there?

Answer. I do not know anything about the vessel; we never inquire any further of the party who calls upon us to make the survey.

Question. When was the writ placed in your hands?

Answer. The day when the survey was made.

Question. Then you made the survey first, and after you had made the survey the writ was handed to you, and not till then?

Answer. Yes, sir.

Question. Mr. Hall: You have said, sir, the cheese was totally damaged; are you well acquainted with that particular character of cheese, sir?

Answer. I never saw anything like it before, it was so unpleasant; it was offensive to remain.

Question. I am speaking of the nature of the article: Had you ever seen the particular kind of article before—that particular kind of cheese?

Answer. I do not know what kind of cheese it was, sir; it was altogether in a mush with the straw.

Question What was it packed in?

Answer. Boxes.

Question. What was the first package into which it was put?

Answer. I believe in boxes.

Question. How was it put in the boxes?

Answer. I presume with straw, for when part was taken out by the consignee, it was mixed up with straw in the condition of mush, and particularly offensive.

Question. Then you are not able to swear more accurately in what it was packed?

Answer. It might have been chaff.

Question. You are not able to speak more accurately than that?

Answer. No, sir.

Question. When were you requested to make this survey?

Answer. On the day the survey was made.

Question. With respect to the segars, the boxes were no way stained, were they?

Answer. Yes, sir.

Question. They were?

Answer. Yes, sir.

Question. Much?

Answer. Some large cases, containing boxes and quarter boxes of segars, were stained, and the nails rusted; some of the boxes inside were stained.

Question. Are segars an article with which you are familiar?

Answer. Yes, sir. I see a good many damaged segars.

Question. Could not the damage be easily accounted for, by great dampness, without coming in actual contact with the water?

Answer. Yes, sir, part of it could be; some were very mouldy, and others quite dry.

Question. With respect to the herring—you had put those down at 20 per cent. In what way were they injured? Was the pickle out of them?

Answer. The pickle was out of some of them, and it was evident, from the exterior of the cask, they had been lying in salt water; they were very dirty.

Question. It was the dirt outside that satisfied you of the fact that they had been lying in salt water?

Answer. Yes, sir.

Question. Was any pickle outside?

Answer. Some of the pickle was run out of the cask, and the herring was spoilt.

Question. I cannot understand how it is, that herring lying in salt water, would not only lose its pickle, but how it would become spoiled by those means.

Answer. The pickle was lost by the casks being inverted some way on board the vessel; some of the heads were out, but the exterior portion of the casks was injured by lying in salt water.

Question. Then you don't mean to say the pickle came out by those means?

Answer. Not at all; I don't suppose the salt water would extract the pickle.

Question. How many casks of herring had their heads out?

Answer. I did not count the number of casks; the general appearance of the casks was such, as I considered them unmerchantable.

Question. I wish to know the number of casks that had lost their heads out?

Answer. That I cannot tell.

Question. Was the pickle out of any of the casks excepting those that had lost their heads?

Answer. Yes, sir; we opened two or three casks which had the pickle out of them, and the herrings were spoiled.

Question. How did the pickle get out of those casks?

Answer. I don't know, sir.

Question. Did you see any injury on the casks by which the pickle could come out?

Answer. No, sir.

Question. How did the pickle get out of those casks?

Answer. I can't tell, sir.

Question by Mr. Kane. Judging from the exterior of the casks, had they been in salt water?

Answer. Yes, sir.

Question. If those casks had cracked, would they not present the same appearance inside as out?

Answer. Yes, sir.

Question. I believe you said, the signs of salt water were found on the outer cases. Were they not?

Answer. Yes, sir.

Question. Were any boxes inside wet?

Answer. Yes, sir.

Question. You found some of them mouldy?

Answer. Yes, sir.

Question. Are you familiar with the process of sweating, that takes place in segar boxes?

Answer. No, sir.

Question. Have you ever come across boxes of segars that were mouldy and sweaty, without having come in contact with salt water?

Answer. I don't know that I have, for I have never been called to see them, unless supposed to have been wet with salt water.

Question. You had never seen this Limeburgher cheese before, I believe you said?

Answer. I never saw cheese like that.

Question. Were they in separate cheeses?

Answer. Yes, sir.

Question. What was the box, or that which held each separate cheese, made of?

Answer. I don't know.

Question. Did you receive any information, with regard to this cheese, from any body present, at that survey?

Answer. No, sir.

Question. Then you merely judged from the general appearance and the smell, that you had not seen it before?

Answer. Yes, sir. I was satisfied from the smell, that they were not a merchantable article.

Question. Do you know whether those segars were made of green tobacco, or not perfectly dry?

Answer. I don't.

Question by Mr. Philips. Did I understand you to say, that the boxes containing the cheese were damaged outside, and they showed they had received salt water?

Answer. Yes, sir.

Question by the Judge. Did all the packages or casks bear unequivocal marks outside, of having been injured by salt water?

Answer. Yes, sir. They were stained.

Question. And such a stain as to indicate to you they were so stained as to be in a damaged state?

Answer. Yes, sir. We had a number of them opened.

Question. Before you opened them, when you first came in to look at them, were they so marked as to indicate that they were damaged?

Answer. A great many, perhaps not every one; but we opened the best looking ones, and we found the cheese all in a mush, and mixed with the material with which it was packed.

Captain Christian Gulager, sworn for the libellant.

Question by Mr. Philips. Do you hold by appointment the office of surveyor of damaged goods?

Answer. I do, sir.

Question. Appointed by this court?

Answer. Yes, sir.

Question. Be pleased to state whether, with Mr. Harrison Hall, you went to the store of Mayer & Brother, and there examined any arti-

cles said to have been imported in the galliot Venilia, and if so, what was the result? State when you went.

Answer. It was on the 4th of this month—the goods were in the store of Mayer & Brother, in Third street, below Willow. We first examined the cases of segars; we found the most of them wet on the outside, and on examining the smaller boxes contained within the large ones, we found many of them wet, and on opening the smaller boxes contained within the large ones, we found many of them wet; and on opening the smaller boxes and examining the segars, they were found musty and mouldy—all we opened, and we opened a considerable number of them.

Question. Do you believe what you opened was a fair specimen of the whole?

Answer. Yes, sir.

Question. What was the amount of damage to them?

Answer. I think we have made it fifty per cent., sir. We then examined the cheese. We found this cheese in a cellar underneath the store, and we had a number of those boxes opened. The exterior exhibited all the marks of having been wet. On opening the boxes, the contents were found in a mass, and very offensive; so much so, it was almost impossible to remain in the cellar.

Question. Was there any thing mingled with the cheese?

Answer. It appeared to have all run together, it is as soft as lard.

Question. Mr. Hall spoke of the chaff or straw having got mingled with it?

Answer. Yes, sir.

Question. Do you recollect whether some of these cheeses were packed in leaden boxes?

Answer. I did not see any that were packed in leaden boxes.

Question. How many of those did you open?

Answer. I don't remember the exact number, but enough to satisfy ourselves of the general damage.

Question. Without any restriction or designation?

Answer. Yes, sir.

Question. Were they merchantable?

Answer. No, sir, we considered them as being useless, and a total loss.

Question. Captain, now the peas.

Answer. The peas we found very musty; the bags were stained, many of them, and the peas were very musty.

Question. Could you tell, according to the exercise of your best judgment, whether the mustiness of the peas proceeded from time, or from the stain of the salt water?

Answer. I should suppose the peas might have been injured in a great measure on account of the length of time they had been on board the vessel, yet many of the bags were very badly stained; I think it was a combination of both causes.

Question. How about the herring and anchovies, the fish?

Answer. We found a number of those with the heads out; the kegs were quite black and mouldy, and they had the appearance of being in the water somewhat. We had a number of them opened, and we found the fish spoiled.

Question. I suppose time would not spoil them?

Answer. I should think not.

Question. Captain, you have been in the merchant service, have you not, for many years?

Answer. I have, sir. I commanded a ship out of this place for twenty years.

Question. Be pleased to state whether these things exhibited to you unequivocal marks of having been in contact with the sea water.

Answer. They exhibited marks of having come in contact with water; I cannot say whether it was salt water.

Question. But they do exhibit unequivocal marks of having been in contact with water?

Answer. Yes, sir, of having been wet.

Question. Can you tell us from what you saw, are you able to form a belief as to how they came in contact with the water; can you tell anything about the stowage or anything of that kind?

Answer. We never saw them aboard the vessel.

Question. Is it the custom, when a vessel has had a long voyage, or encountered rough weather, is it not, frequently to examine the hatches?

Answer. The preliminary is to see that the hatches are secure, and then we examine the stowage.

Question—Judge, I understand the Captain to say, when called to make a general survey on damages, the preliminary to that survey is the condition of the hatches, and then they examined the stowage as she discharges.

Answer. Yes, sir.

Question—Mr. Philips. Who makes that survey?

Answer. There are five of us appointed by the court.

Question. Was such a survey made in this case?

Answer. No, sir.

Question. Be pleased to state whether or not it is the universal custom to have a survey after a vessel has encountered adverse weather?

Answer. Where damage is apprehended it is, and in some cases where it is not apprehended. We have standing orders from some mercantile houses to examine them, whether they have any adverse weather or not.

Question. Have you seen the galliot?

Answer. I have seen her, but I was not on board of her.

Question. Then you can tell nothing as to the particulars by which these damages were sustained?

Answer. No, sir, not from on board.

Question. Captain, when there is a general survey on board; or rather is or is not the object of the general survey on board every vessel to clear the ship of liability?

Answer. It is for the purpose of determining that the goods have been properly stored.

Question. Then, when the goods leave, the presumption arises that the goods have been well taken care of?

Answer. Yes, sir.

Question. When called upon to make such a survey, and any thing is found to be damaged, it is examined where it is found, so that your language may be the exact cause and appearance of the injury?

Answer. That is it, sir.

Question by Mr. J. Fallon. How many boxes of segars did you open?

Answer. I don't recollect.

Question. Half a dozen boxes?

Answer. Perhaps 40 or 50 out of the different cases.

Question. All the cases you opened and found damaged, I understand you to say, were actually wet at the time?

Answer. No, sir; they were damp.

Question. I think, in your examination in chief, you use the word wet?

Answer. No, sir; they were wet on the outside; the outer cases were wet, and some of the small boxes on taking them out; we then opened a number of them in each package and found they were damaged.

Question. Are you a judge of segars sufficient to inform us of the character of those segars, whether they were green or otherwise?

Answer. I cannot tell you whether the tobacco was green when they were manufactured, or not; they were so damp you could press them together with your fingers.

Question. Are you sufficiently a judge to inform us whether the leaf was green when put up?

Answer. They had remained aboard six months, and had they been shipped in a green state they would have been rotten in six months.

Question. Have you ever seen green segars, after they have been on board six months, before?

Answer. I don't know that I have. We had been informed that this vessel had put into Falmouth, on her voyage, leaking, and from that circumstance it would be very readily accounted for.

Question. The herring; did you find any damaged which had not lost the pickle?

Answer. We opened some that had been broken or injured, and found what pickle there was sour; but whether it was from the water running in I don't know. If the kegs were so leaky as to let the pickle out, the probability is the water might get in.

Question. You found some with the pickle sour, and others had lost a portion of the pickle from some cause?

Answer. Yes, sir.

Question. By Mr. Kane. What is the cost of surveying a vessel?

Answer. The cost is ten dollars.

Question. Are you familiar with the Limeberger cheese?

Answer. I am not.

Question. Did you ever meet with it before?

Answer. I don't know that I did under that name; I have carried the Dutch cheese.

Question. By Mr. C. Fallon. When you examine segars, it is not unusual for you to call in Mr. Beck, as an expert, to assist you, is it?

Answer. We are required to call in persons of the trade if we think it necessary to do so.

Question. I wish you would be kind enough to answer my question as regards the calling in of Mr. Beck as an expert in that article.

Answer. We have called him in occasionally, and other dealers also, to examine the segars, an article with which he was acquainted.

A certified copy of the survey is read by Mr. Philips, (dated 3d June, 1852.)

Isaac Crisman, sworn for libellant.

Question. By Mr. Philips. What is your business?

Answer. Tobacconist and segar maker, 235 North Third street.

Question. Be pleased to state whether you by yourself, or in company with others, examined the segars at the store of Mayer & Brother, imported in the Dutch galliot?

Answer. Me and Wm. Sobey.

Question. What is Mr. Sobey's business?

Answer. Tobacconist.

Question. Where is his place?

Answer. No. 225 North Third street.

Question. State when it was.

Answer. I don't know whether it was Friday or Saturday of last week. It was the 10th of June.

Question. State what you and Mr. Sobey saw at your examination.

Answer. We saw segars, and all we saw were damaged.

Question. How many did you see?

Answer. We opened half a dozen boxes ourselves, and there were a great many open when we came there, and all were spoiled by water; some were rotten you know, where the outsides were stained with water, and the inside was not rotten, but mouldy.

Question. Have you any doubt of their being stained by water?

Answer. I say they were spoiled by water; how they got it, of course I cannot say.

Question. The extent of the injury you heard stated by the gentlemen who were examined; that they were damaged 50 per cent.; what is your judgment?

Answer. I say they were more damaged than that, all what I saw; some were rotten, and others mouldy, and you could do nothing with them.

Question. What kind of segars were they in good condition?

Answer. They *was* a pretty good segar; seven, eight, or ten dollars a thousand.

Question. They would sell for?

Answer. Yes, sir.

Question by Mr. Kane. How long have you been a tobacconist?

Answer. Thirty-five years. Almost all my time.

Question. Do you import segars, yourself?

Answer. No, sir.

Question. You are not an importer?

Answer. No, sir. I have seen a good many imported.

Question. What kind of segars were those?

Answer. Well, they *was* a Dutch segar.

Question. Have you purchased Dutch segars?

Answer. Yes, sir.

Question. You have been in the habit of examining and selling them?

Answer. Yes, sir.

Question. Is it not a very common thing for the Dutch segars to be packed green?

Answer. Oh yes, sir.

Question. Is it not generally the case?

Answer. That is more than I can tell. I have had damaged segars before, and I judged by that they *was* green.

Question. What effect would five months' voyage have upon segars, packed green?

Answer. Well, I don't know, but I guess they would be a little soft; but I don't think they would get so mouldy or rotten as them; I cannot say.

Question. You don't think a five months' voyage would spoil a segar packed green?

Answer. Well, I don't know.

Question. Were the outsides of the boxes wet or damp?

Answer. Well, they *was* damaged, and they *was* a little damp, by the looks of them, and by the feeling of them.

Question. Did you see the cases in which those segars were packed?

Answer. I did, sir.

Question by Mr. Philips. You gave the certificate I handed to you?

Answer. Yes, sir.

Hermann Kraft, sworn for libellant.

Question by Mr. Philips. What is your business?

Answer. I keep a public house in Race street, below Fifth.

Question. Were you requested by any body to examine any goods of Mayer and Brother?

Answer. By the clerk of Messrs. S. and W. Welsh.

Question. At their request you went where?

Answer. At S. Mayer and Brother's store, Third, below Willow.

Question. What did you see?
Answer. I looked at some cheese and herring.
Question. What was the condition?
Answer. They were damaged.
Question. How much?
Answer. One box was in middling order, and the other was damaged altogether, and not worth any thing for my use and my business.
Question. State how it was damaged.
Answer. Whether it was damaged either by salt water, or being stowed in a wet place, I don't know.
Question. Was it damaged by water; by wet?
Answer. I think so.
Question. To the best of your judgment and belief?
Answer. Yes, sir.
Question. How much damaged?
Answer. I don't know that; they were very offensive, both the cheese and the herring.
Question. Who went with you?
Answer. Mr. Hartman.
Question by Mr. C. Fallon. Would not this cheese, sir, if stored for five or six months in the hold of a vessel, in the close damp hold of a vessel, coming over here, would it not be likely to be as much injured?
Answer. If it had been shipped in the summer season from Rotterdam. If it had been in a warm season, it would have been equally injured probably without water.

Mr. Hartman, sworn for libellants.

Question by Mr. Philips. At whose request did you go to see these goods?
Answer. I went with Mr. Kraft.
Question. What did you see there?
Answer. I seen some boxes of cheese and herrings.
Question. What was the condition, good or bad?
Answer. They *was* in a damaged condition.
Question. How much damaged?
Answer. Likewise I am in the same business, and I could make no use of them in my business.
Question. What occasioned the damage?
Answer. By salt water, or being stored away in damp places.
Question. Were they worth any thing?
Answer. They might be to somebody, but not to me.
Question. I mean to sell; what would they be worth?
Answer. I could not say. I never seen sold damaged goods yet, sir.

Charles Wolf, sworn for libellants.

Question by Mr. Philips. You are a dealer in the article of cheeses of this kind, and herrings?

Answer. Yes, sir.
Question. Did you see those goods at Messrs. Mayer's store?
Answer. Yes, sir.
Question. What were they like?
Answer. In bad condition when I saw them.
Question. How bad?
Answer. Not fit to sell.
Question. Were they wholesome to keep at this season?
Answer. No, sir.
Question. What in your opinion occasioned the injury?
Answer. My opinion is, that they were wet by water.
Question. Well, sir, could the time, taking into consideration the time at which they were packed, (December,) could they be injured without water?
Answer. Not in the way in which I saw them; the outside of the boxes was stained with water.
Question. Apart from that condition, would the time between December and June be likely to damage those goods in the way in which you saw them?
Answer. I don't think it would.
Question. You saw them at Mayer & Brother's store?
Answer. Yes, sir.
Question by Mr. C. Fallon. I understand you, that the particular reason why you suppose they could not have been injured in that way on account of the length of time they were in the vessel, is because they had stains of water on the outside?
Answer. Yes, sir.
Question. But the injury of the cheese, particularly, could it not have occurred from being five or six months in the hot, close hold of a vessel?
Answer. It might be, if stored in summer, or if put in the vessel in summer, or if it were injured before it came into the vessel.
Question by Mr. Philips. If it had been injured before it went into the vessel, any one could smell it out, could they not?
Answer. Yes, sir.
Question by Mr. C. Fallon. When did you make the examination?
Answer. Last Thursday.

Wm. D. Sherrard, sworn for the libellants.

Question by Mr. Philips. What is your business?
Answer. I am an insurance broker.
Question. Be pleased to say whether you examined those goods of Mayer and Brother.
Answer. I did, sir, examine all of them.
Question. Where, sir?
Answer. At the store of S. Mayer & Brother, Third street, below Willow.
Question. When, sir?

Answer. I think the first examination I made was on the first of June.

Question. Did you examine the bills of lading?

Answer. Yes, sir, I held them in my hands while making the examination of the segars, herring, and peas.

Question. Did the goods correspond with the bills of lading? Were they the same goods?

Answer. Yes, sir.

Question. Be pleased to state, as well as your memory will enable you, about the particulars of your examination.

Answer. With reference to the segars, there were eight boxes in the store when I made the first examination. These eight cases were filled with smaller boxes, and the corners of six of the boxes were very badly stained, and down through the whole tier of segars the smaller boxes were very badly wet, extending, probably, half through the box.

Question by Mr. C. Fallon. Do you mean all, or only one or two?

Answer. Probably one or two; I will not be positive with regard to that. The dampness seemed to have extended all through the large packages, although in the middle of the larger packages there was no stain. There *was* six out of the eight stained. There were two boxes not stained upon the corners, but upon the top of the box there were stains. In opening two of the largest and driest cases, and taking out a box as near to the centre as I could get, *and* at that time they were quite wet. Not so as the water would drop from them, but they would wet the fingers coming in contact with them. I think they were all badly injured, it appeared to me, by having laid in the bilge-water; some of them were mouldy, and seemed decayed. Some of them had their heads broken out, and you could see inside of them. There was water standing upon the ground in the storeroom where the segars were, as if it had come out of the boxes; I could not say that it had. It looked as if it had. I am satisfied the segars were partially spoiled from actual contact with water, and that combined with the wet goods being around or contiguous, and other dampness in the vicinity, had extended the dampness throughout, so that all of them I considered to be wet.

Question by Mr. Philips. Take in all the goods you saw there, and give us your judgment.

Answer. The day I examined the peas they appeared to be musty, and there were some stains on the bags. Upon smelling them, some were quite musty, and others were not so. The cheese I did not examine that day. The boxes of cheese appeared to have been soaking in the water also. On opening them there appeared to have been a mass of some mushy substance mixed in the straw, which was in a partial state of decay, I should think; the smell was very offensive.

Question. You say they looked as if the boxes had been in water?

Answer. Yes, sir.

Question. Have you any doubt of it?

Answer. No, sir.

Question. Could that have happened if the vessel had been properly dunnaged?

Answer. I don't know, sir; I don't know any thing about that, sir.

Question. Could you tell what would be the value of the articles at all?

Answer. I should not consider the cheese of any value at all for the purpose of merchandise; it would be good for manure.

Question, by Mr. C. Fallon. On whose behalf did you make this examination?

Answer. I made it between Messrs. Mayer and the Delaware Insurance Company, to show for what amount they were liable.

Question. It was for the purpose of ascertaining what the liabilities of the insurance company were?

Answer. Yes, sir.

Question. You are not particularly acquainted with these particular articles, are you?

Answer. No, sir.

Question. You have never seen this kind of cheese before?

Answer. Yes, sir; I have seen it and tasted it.

Question. You have said that some herring casks showed marks of decay; was that frequent; was there more than one, or two, or three?

Answer. Well, sir, I did not go through the whole lot of herrings sufficient to say how many were in that condition; several of those that were most convenient to where I stood were in that condition. The herrings were piled up on the floor of a cellar, and you could not see the whole of them; but I had one brought up into the store.

Question. Of those you examined, what part was rotten?

Answer. Just at the edge of the staves, they had become rotten and decayed, so as to admit of a leak.

Question. A leak from the outside?

Answer. Yes, sir.

Question. You are not sufficient of an expert to say what would be the effect of a herring cask soaking in water?

Answer. No, sir.

Question. Have you had any experience, sir, in any kind of provisions that had been put up in pickle and then put in salt water, or in any water for any time?

Answer. No, sir.

Question. For aught you know to the contrary, it would have kept for fifty years?

Answer. Yes, sir.

Question, by Mr. J. Fallon. I understand you to say the peas were dry and musty.

Answer. They were dry.

Question. But the segars were all wet?

Answer. They were damp.

Question. Those you found in the centre of the boxes stained were wet?

Answer. Yes, sir.

Question, by Mr. Philips. Could you tell whether the peas were injured by time or water?

Answer. There were stains on the bags.

Question. Stains of what?

Answer. As if water stains; I considered them to be water stains.

Question. Were they injured by time or water?

Answer. When Capt. Gulager and Mr. Hall went there, they looked at them first. I said, I don't think there is any damage done those peas. After looking about awhile, I said there is a bag that looks as if it might have been wet. I opened it, and took out a handful of peas, and, says I, Gulager, these are certainly spoiled. I handed them to him, and he said they certainly are musty; they are damaged.

Question. You spoke of adjustment between Mayers and the insurance company. There is no liability, is there; they are memorandum articles?

Answer, by Mr. C. Fallon. I think segars are not.

William Sobey, sworn for libellants.

Question by Mr. Philips. You are a tobacconist at 225 North Third street?

Answer. Yes, sir.

Question. Did you, with Mr. Crisman, examine some segars at the store of Mayer & Brother?

Answer. I did, on the 10th of June.

Question, (showing a paper.) Is that paper correct?

Answer. Yes, sir.

Question. Give us the result of your recollection; in the first place, you saw the segars?

Answer. Yes, sir.

Question. How many did you examine?

Answer. A considerable number; I cannot say exactly how many.

Question. I don't mean exactly in point of number; did you satisfy yourselves?

Answer. To satisfy myself I took one box off the shelf—a number were opened already that were damaged—I opened it and found it to be in a damaged condition.

Question. State generally the condition of the segars.

Answer. The condition was very bad; so much so that a portion of them were entirely of no account at all; some were entirely gone.

Question. Could you tell what occasioned the injury?

Answer. Well, that would be rather a difficult matter.

Question. From the appearance and indications?

Answer. From their appearance they appeared to have been damaged from fomentation. (Mr. C. Fallon—fermentation.)

Question. What produced that?

Answer. It must have been water.

Question. Then, sir, we may say they were damaged by water?

Answer. Yes, sir; I believe some of them were damaged where water did not come in contact with them at all; but I see the boxes stained, which seems to indicate there was water on the outside of the boxes.

Question. Would not the indication be different from a natural cause and one received from water?

Answer. Goods may be damaged by not actually coming in contact with water, but by heat.

Question. How long have you been in this business?

Answer. Some thirteen or fourteen years for myself; I have been at the business all my life, from seven years old.

Question. Those segars, in good condition, would be worth how much?

Answer. I could not say.

Question. Mr. Crisman said seven, eight, or ten dollars.

Answer. I might differ from Mr. Crisman; they are selling at all prices, from two to ten dollars.

Question by Mr. C. Fallon. Could not the damage which these segars exhibited have been produced by being in the damp hold of a vessel on a five months' voyage, without coming in contact with water at all?

Answer. Yes, sir.

Question. If there were water in the bottom of the vessel, and in a close, damp hold, with the vapor coming up, would not that account for the whole damage to those segars?

Answer. If I had not seen the stain on the boxes I might have supposed that was the cause.

Question. Assuming that the stains are not there, would it not account for the damage without anything else?

Answer. I think it would produce that effect.

Question. And would they not be more apt to ferment if the segars were put up green?

Answer. Yes, sir?

Question. Is it not the nature of segars, when put in a damp, close place, to sweat, and more particularly so if the tobacco were green?

Answer. If they are in a damp state they will sweat.

Question. And if green in the first instance, still more so?

Answer. Yes, sir, they would, in a damp, close, confined store, I suppose, if the tobacco were damp when packed in boxes.

Question. But it would be more particularly so in a vessel?

Answer. A number of segars sent to California at first did, and they are now sending them all cemented with tin; unless they are put up with great care they will not stand the voyage to California.

Abraham Ziegenful, affirmed for libellants.

Question by Mr. Philips. Where do you live?

Answer. Third street Hall.

Question. Keep a public house?

Answer. Yes, sir.
Question. How near Mayer & Brother's store?
Answer. Next door.
Question. Do you know any thing about these cheeses?
Answer. Well, nothing further than to smell them.
Question. Could you smell them in your house?
Answer. Yes, sir.
Question. What did you do in consequence of smelling them?
Answer. I went to Mr. Mayer the next morning, and told them they must be removed, or I would report them to the Board of Health.
Question. Did they smell very strong?
Answer. Yes, sir.
Question. Did you see them?
Answer. The board was loose, and I saw them packed up in square packages about four inches square.
Question. Were they in an offensive condition?
Answer. It was offensive to me.
Question. Were they marked with stains, or anything of that kind?
Answer. They looked dark; I seen they were square packages of Lymbergher cheese.
Question by Mr. Kane. Have you ever seen that sort of cheese before?
Answer. Yes, sir.
Question. Did these look like that?
Answer. Yes, sir. About three weeks ago there was a pound brought into the bar-room, and it smelled so bad I had it taken out.
Question. It always is so offensive?
Answer. Yes, sir. It is put down as not good until it does stink.
Question. What is its shape? (Is it put up like the Stilton cheese of England, Judge?)
Answer. Yes, sir.

Moses Goldsmith, affirmed for libellants.

Question by Mr. Philips. What is your business?
Answer. I keep a public house in Race street.
Question. Are you familiar with this sort of goods?
Answer. Yes, sir.
Question. Did you see these goods?
Answer. Yes, sir.
Question. What was their condition?
Answer. I seen them in a damaged condition.
Question. Damaged, how, sir?
Answer. I see them in such a state they could not be used.
Question. Could you tell how they derived their damage?
Answer. No, sir.
Question. I suppose you understand all about Lymbergher cheese?
Answer. I have them in the house, and Swiss cheeses.
Question. Were those good or bad?

Answer. They *was* all bad. Some Swiss cheeses, several boxes, appeared to be good. There was particularly one box. I had a taste of it in the presence of Kraft & Hartman, and they tasted it too, and it tasted of salt water.

Question. Were they too bad for use?

Answer. They could not be used in such a mushy condition.

Question. How about the fish?

Answer. I seen the fish.

Question. What condition was that in?

Answer. I seen several casks that were damaged.

Question. Did you see any stains on the boxes of cheese or fish?

Answer. They *was* wet on the outside.

Question. What is Lymbergher cheese worth, good?

Answer. It is worth about twenty-three or five cents a pound.

Question. What would the Swiss cheese have been worth?

Answer. The same price.

Question. What would the herring and anchovies have been worth?

Answer. I have paid sometimes $1 12 to $1 25, and I have paid $1 62½ per keg.

Question. How about the anchovies and sardines?

Answer. I don't know the worth of them.

Question by Mr. J. Fallon. Did it smell more than the same kind of cheese usually does?

Answer. Yes, sir.

Question. How many kegs of herring did you see?

Answer. Forty-five or six.

Question. Had those kegs been opened before?

Answer. I don't know; several *was* opened.

Question. Were they full of pickle?

Answer. Some was not, and some was.

Question. Were those full of pickle affected in the same way?

Answer. There was one full of pickle, and so affected it could not be used; they were soft in place of being hard.

Question. What was the cause of that?

Answer. Of course I cannot say.

Question. Did you examine the pickle?

Answer. Yes, sir.

Question. You don't know, if it were either bad or good, whether it would produce the same effect?

Answer. They would not have got soft if laid in good pickle.

Question. The casks, full of pickle, were perfectly good outside, were they not?

Answer. So far as I saw them, they were perfectly good and sound.

Charles Brurine, sworn for libellants.

Question by Mr. Philips. You know something about Swiss and Lymbergher cheese; what is it worth?

Answer. Twenty, twenty-two, twenty-three, and twenty-five cents a pound.

Question. Does it bring that in America, here, sir?

Answer. Yes, sir.

Question. Do you know the value of sardines?

Answer. Some are worth $1 50 per half keg, and $2 50 for a full keg.

Question. How do you buy your cheeses?

Answer. I buy 4 or 5 cwt. at a time.

Abraham Goldsmith, sworn for libellants.

Question by Mr. Phillips. Are you in the employment of Mayer & Brother?

Answer. Yes, sir.

Question. Be pleased to state whether the goods just referred were imported in the galliot Venilia.

Answer. They are.

Question. The whole of them?

Answer. Yes, sir.

Question. Do you recollect the day you received them at your store?

Answer. I think they came up on the 25th, 6th, 7th, and 8th of May.

Question. Who brought them?

Answer. James Gaw and George Clay.

Question. And they are the same goods?

Answer. Yes, sir.

Question. Where were the Brothers?

Answer. One was in Europe, the other at Wilmington, and the other was sick.

Question. What were the peas worth, sound?

Answer. We have sold some of them for four and five dollars a hundred, and some three dollars and fifty cents.

Question. By Mr. J. Fallon. Do you recollect which goods came on the first day?

Answer. I think the first day we received four bags of peas.

Question. They were packed in your cellar, were they not?

Answer. The cheese? Yes, sir.

Question. I suppose you just laid the goods down as they came, and when the other layers came, they were put on the top?

Answer. Yes, sir.

Question. Those that came first were put at the bottom, and the next were laid on the top?

Answer. They were piled up, and stood as they came, until they were all there.

George F. Clay, sworn for libellants.

Question. By Mr. Philips. What is your business?

Answer. I am a drayman.

Question. Did you go to the vessel for these things?

Answer. Yes, sir. For Mr. Mayer.

Question. How many did you get, when you first went?

Answer. Twelve casks of herring, and I think five casks of cheese.

Question. Why didn't you get any more?

Answer. There was no more out. The next day I went down for some more goods for another gentleman, and I found there was a lot more out, and in the afternoon I went down about three o'clock, and the gauger came and gauged them. There was some cheese left, and I told my man to go back for fifty or fifty-one boxes of cheese then. While we were on the wharf for the balance—it must have been four or five o'clock—a man came down, and we inquired if he would haul them or not, and he said it was too heavy, and when my man came up with the cheese, I found it was going to rain.

Question. How many bags of peas did you get out?

Answer. None.

Question. The next day, how many?

Answer. Twenty-seven bags.

Question. Don't you recollect there was four bags out, and they said they would not take any more out?

Answer. They said they would not put any more out that evening.

Mr. Philips. I now offer in evidence a paper, signed by the Government appraiser, as to the valuation.

Objected to by Mr. Kane, in the absence of Mr. Martin.

Mr. Philips reads an estimate of the goods damaged, and those for which credit is given.

Mr. C. Fallon opens for respondent—Isaac De Waal, sworn.

Question. By Mr. J. Fallon. Are you mate of the vessel spoken of?

Answer. Yes, sir.

Question. (Showing him two books.) Are these your log books?

Answer. Yes, sir.

Question. Describe how the goods were packed on board your vessel.

Answer. The segars and cheese were put on the top of the gin.

Question. On what did the gin rest?

Answer. It rested on the dunnage.

Question. How far were the segars from the bottom of the hold?

Answer. About six feet.

Question. What was on top of the segars?

Answer. Old sails.

Question. Where was the herring packed?

Answer. On top of the gin, fore and aft.

Question. How were your hatches fastened down?

Answer. The hatches were closed, and some strong canvass placed over them.

Question. Did the hatch fit over the opening?
Answer. Yes, sir.
Question. How many hatches had you?
Answer. Four. (4.)
Question. Where were they?
Answer. Two hind, one in the centre, and one in front.
Question. Was the main hatch ever opened?
Answer. It never was opened.
Question. Were the others opened?
Answer. The others were opened in fine weather to let out the sweat of the vessel.
Question. Were they open at night?
Answer. No. When night come, they were closed.
Question. What day did you leave Rotterdam?
Answer. I cannot say exactly, it was in December.
Question. How far is Helvertslice from Rotterdam?
Answer. Fourteen hours.
Question. When did you leave Helvertslice?
Answer. On the 26th December.
Question. Why did you wait till the 26th before you left Helvertslice?
Answer. We had good weather till we were off the channel.
Question. When did the weather change?
Answer. New Year's eve.
Question. What damage happened to your vessel from that weather?
Answer. The bowsprit was lost, and the top-mast and bulwarks.
Question. Did you lose any of the crew?
Answer. We lost our cook.
Question. How did you lose the cook, the bowsprit, the top-mast, and bulwarks?
Answer. By heavy seas washing over us.
Question. Did you keep these log-books?
Answer. Yes, sir.
Question. When did you make the notes in this log?
Answer. Every day.
(The interpreter reads from date January 5th, 1851, in the log-book.)
Question. Did you go before a notary in Falmouth?
Answer. Yes, sir.
Question. Did you make your statement to that notary?
Answer. Yes, sir.
Question. Did you take your log with you?
Answer. I did.
(The protest made before the notary is offered, read, and not objected to.)
(The survey, dated 31st Jan., 1852, is read and offered in evidence; unobjected to; also the certificate of the consul.)
Question. Who superintended the stowage of the cargo at Rotterdam?

Answer. A stevedore.
Question. Do you recollect his name?
Answer. No, sir.
Question. Were you mate of the vessel then?
Answer. I was.
Question. Did you superintend the stowage of the cargo?
Answer. As soon as it was stored, I superintended it.
Question. What condition was she in at Rotterdam?
Answer. She was in good condition at that time.
Question. Did you ship any water, coming here from Falmouth?
Answer. No, we did not.
Question. Was any damage done to the cargo by water?
Answer. Not that I know of.
Question. Was there any leakage from Falmouth here?
Answer. No.
Question. Did you superintend the discharge of that cargo here?
Answer. I did.
Question. What was the general condition of the cargo, when discharged?
Answer. It was not damaged any how, that I could see.
Question. Did you deliver it to the agents of the owners who came down for it?
Answer. No, I did not. I put some goods ashore, and they were standing there all night.
Not cross examined.

Mr. Henry West affirmed.

Question, by Mr. Kane. Do you remember the arrival of this vessel, and the delivery of her cargo?
Answer. Yes, sir.
Question. Who superintended its delivery?
Answer. I did.
Question. What appeared to be its condition?
Answer. I didn't notice any thing damaged, except the herring, and also the peculiar smell of the cheese.
Question. Did you hear any complaints made by the parties to whom this cargo was consigned?
Answer. Nothing except the state of the herring and the peculiar smell of the cheese.
Question. Did they take it away?
Answer. Yes, sir.
Question. Do you know who collected the freight?
Answer. They sent down and paid it, and I marked it paid.
Question, by Mr. C. Fallon. Was the cheese packed in tin foil, or how?
Answer. It was packed in something of that kind; I cannot tell what, exactly.
Question. How was the herring?

Answer. On the outside there were large masses of something white, looking like salt.

Question. Did Mr. Mayer, or any of the firm, take any notice of the condition of the cargo?

Answer. I saw no one down there but the draymen.

Question. What was the outside appearance of the bags of peas?

Answer. I didn't notice any damage at all; clean and in good order.

Question. Where were they stowed?

Answer. I think over the gin.

Question. Could the bilge water reach them, or not?

Answer. No, sir.

Question. Could the bilge water reach the cheese?

Answer. I could hardly say about that.

Question. Was not the cheese on the gin?

Answer. Some cheese was over the gin.

Question. Was any under it?

Answer. No, sir.

Question. Where were the segars?

Answer. I think they were forward; I think on the top of the gin. I didn't look particularly, and I didn't notice any damage or stain on the boxes.

Question. You saw the whole cargo delivered, did you?

Answer. Yes, sir.

Question. Was there a piano there?

Answer. There were several packages marked piano.

Question by Mr. Kane. Do you know to whom it was consigned?

Answer. To Mr. Hummell.

Question. Did you serve a subpœna on Mr. Hummell?

Answer. I went there, and he was out of town.

Question by Mr. Martin. Were you in the hold of the vessel, and did you examine the goods?

Answer. I was down there for curiosity's sake.

Question. What part were you in?

Answer. All over; I didn't make any particular examination.

Question. What was the amount of freight Mr. Mayers paid?

Answer. About $200, or a little over.

Question. Did you send up for it?

Answer. I went up, and a young man said he would bring it down, and he did so a day or two after.

Question. What did the young man say about Mr. Mayer when you *when* up there?

Answer. Nothing more than that, and that Mr. Mayer was not in.

Question. Do you know of any other parties claiming damages from this vessel?

Answer. I do not, sir.

Question by Mr. J. Fallon. Were there any other segars and herring on board?

Answer. I don't know.

The court here adjourned until 10 o'clock, a. m., (Wednesday, tomorrow.)

Wednesday morning, 10 o'clock, a. m.

Mr. J. Fallon gives in evidence the whole general bills of lading, remarking, that some of the words relied on by the respondents were written as well as printed.

John Monte de Rosy is sworn for respondent.

Question by Mr. J. Fallon. What is your business?

Answer. Importer of general merchandise, and have been established a great many (17–18) years.

Question. Did you import any goods in this vessel?

Answer. Yes, sir, 127 barrels of gin; and I was at the vessel from the first to the last, while she was unloading; and I was on board about four days after she arrived until she was discharged.

Question. State the condition of the hatches.

Answer. As far as I can judge the hatches were in a perfect condition, and when they were opened the goods were stored as is the usual custom.

Question. Where was your gin?

Answer. It formed the two lowest tiers, from one end of the vessel to the other.

Question. How was the cheese?

Answer. I saw a lot of cheese, fore and aft the main hatch, upon the casks of gin.

Question. And the segars.

Answer. The same way.

Question. State what the condition of your gin was.

Answer. Taking into consideration the length of the voyage, it was perfectly good.

Question. Were the casks discolored?

Answer. From the damp of the vessel they were a little black, but that was in consequence of the length of the voyage.

Question. Are casks always discolored?

Answer. It depends upon the length of the voyage; and on a short voyage, with a general cargo, they sometimes become black; and it depends a great deal upon the balance of the cargo.

Question. Have you imported gin before, with such a cargo as this?

Answer. Yes, sir.

Question. What is the effect of importing gin and other liquors, when in the hold of a vessel where there is cheese, and an assortment such as this?

Answer. As soon as the other merchandise is subject to sweat it has an effect upon the exterior of the casks, but not upon the gin itself.

Question. From the length of the voyage, with your experience of seventeen years' importing and exporting, can you say, whether these casks were more discolored than it is usual for them to be?

Answer. I don't think they were more discolored, but there were two or three stained by the cheese.

Question. How could you tell it was from the cheese?

Answer. By the smell, taste, and color; and not a single cask showed the stain of sea water, for the stain of sea water is more black.

Question. What was the condition of the gin inside the casks?

Answer. Perfectly good; and it is an article that is easily affected, if it came in contact with sea water.

Question. Have you been in the habit of importing herring?

Answer. I have not imported it, but I have exported it.

Question. Would casks of herring be damaged by sea water?

Answer. My opinion is they could not.

Question. Did you see this herring?

Answer. Yes, and I found it in bad order; and my notion is, that it proceeded from the nature of the article itself.

Question. Are you acquainted with the character of the pickle in which herring is placed in Holland?

Question. The pickle is changed every five or six weeks in Holland.

Question by the Judge. Is that the pickle used for exportation?

Answer. I don't know, sir.

Question. If it will not keep more than five or six weeks, how do we get any good herring from Holland?

Answer. The general voyage from Europe, across the Atlantic, is from thirty-five to forty-five days, and I have had a vessel from Rotterdam to New York in twenty-one days.

Question by J. Fallon. Is it a frequent thing for herring to come damaged?

Answer. Yes, but not by sea water.

Question. Did you see the segars?

Answer. I saw the cases, but not the segars themselves.

Question. Are not segars apt to sweat on a voyage from Holland here?

Answer. Very much; I have had them from Bremen, on the steamer Washington, in fifteen days, perfectly wet.

Question. What is the cause of that?

Answer. My impression is, because they are made of tobacco leaves, wet, and are packed before they are dry.

Question. From your experience, was the condition of the cargo in this vessel generally good, or not?

Answer. I must say that it was very good. It appeared to be well stored, and the merchandise in pretty good order.

Question. Did you notice the cheese boxes?

Answer. I saw one or two in which the cheese had melted.

Question. What was the cause of its smelling?

Answer. The dampness of the vessel and the heat of the hold.

Question. Are you acquainted with the character of this kind of cheese?

Answer. Yes, sir.

Question. Does it smell?
Answer. Oh! bad.
Question. Always?
Answer. Always, from the day they are made until they are eaten, and it will smell as soon as it gets warm.
Question. Did you take notice of the peas?
Answer. I had, myself, some of them.
Question. What was their condition?
Answer. Perfectly good.
Question. How about the bags around the peas?
Answer. I saw two or three which had stains, which was occasioned by the action of the pickle.
Question. Would salt water have injured the peas more than they were?
Answer. I think it would.
Question. Can you say they had not been in salt water?
Answer. Those I saw were perfectly good.

Mr. Martin cross examined.

Question. What is your business?
Answer. An importer.
Question. Of what?
Answer. General merchandise.
Question. What is the firm?
Answer. Aslem & Davis, Philadelphia and New York.
Question. Are you agent of any house in Europe?
Answer. Yes, sir.
Question. The agent of the gentleman who shipped pretty much all this cargo?
Answer. He only chartered part of the cargo.
Question. You were not in the hold of the vessel?
Answer. No, sir.
Question. Did you see the cargo delivered?
Answer. From first to last.
Question. Was the cheese fore and aft?
Answer. Yes, sir.
Question. Your casks were very much stained?
Answer. Yes, but not by sea water.
Question. You say that two were stained by the cheese; how did the others get stained?
Answer. By the dampness of the vessel.
Question. Was there any dunnage below your casks of gin?
Answer. Yes, sir; I have seen it.
Question. Was it properly dunnaged?
Answer. So far as I know.
Question. Were your casks in good order?
Answer. Yes, sir.
Question. Did you notice what was stowed above the gin?

Answer. I have seen cheese, segars, herrings, and peas, some casks of brandy, and other things which I don't know.

Question. Did you see a package with a piano?

Answer. I saw a package, but don't know it was a piano; it was about the size of a piano.

Question. Did you examine any herrings?

Answer. I saw a few of them on the wharf; the heads were out of the casks.

Question. How did the pickle get out; was it not from bad stowage?

Answer. No, sir; some of the casks were perfectly rotten.

Question. Are you acquainted with Lymberger cheese?

Answer. Yes, sir.

Question. If put on board a vessel in December, and coming from Europe here, at that time of the year, is it likely to melt?

Answer. There is very little difference in the dampness of the hold of a vessel in winter or summer, and it would be affected the same way at whatever time it was shipped.

Question. Are you acquainted with German segars?

Answer. Yes, sir.

Question. Are they generally made of American tobacco?

Answer. Yes, sir.

Question. Are the segars made up wet?

Answer. They make them of the green leaf.

Question. Is that of your own knowledge?

Answer. Yes, sir; and if the tobacco is dry, they have to wet it, and they are the first things on board a vessel to get wet, but after the dampness has passed away they are perfectly good.

Question, by Mr. H. M. Philips. Where is your place of business?

Answer. Walnut street.

Question. From what part of Europe are you?

Answer. Amsterdam.

Question. You have been here how long?

Answer. One year and a half.

Question. Within that time have you known a Dutch vesssel come here in thirty-five days?

Answer. Yes, sir; one vessel in twenty-one and another in thirty-seven days.

Question. Is not the average passage sixty days?

Answer. No, sir.

Question. Had you experience in the shipping business in Europe?

Answer. I have always been in the importing and exporting business.

Question. Is it not usual sometimes to open the hatches of a vessel, and ventilate the cargo?

Answer. I suppose so.

Question. How was this vessel dunnaged?

Answer. Well, sir, in the usual way. I saw the pieces of wood.

Question. Where?

Answer. Between the casks.

Question. Was it between the skin of the vessel and the casks; all you speak of is from the superficial observation from the deck?

Answer. From the main hatch.

Question by the Judge. How deep was that vessel at the main hatch?

Answer. About ten feet.

Question. This assorted cargo was above your two rows of gin?

Answer. Yes, sir.

Question by Mr. Philips. Is this cheese as good when it smells bad, and when soft, as if it were hard?

Answer. It is considered so in the country where it is made. I don't know how it is here.

Question. Did you ever taste any mixed with sea water?

Answer. No, sir.

Question. You don't know how it would improve the taste?

Answer. I don't think it would improve it any.

Question. Is this an article of merchandise here?

Answer. Yes, sir; it is a very important importation.

Question. Was this cheese good or bad?

Answer. Not very good.

Question. Were there any marks of discoloration on the boxes you saw?

Answer. Yes; but it proceeded from the cheese itself.

Question. The cheese always smells, does it not?

Answer. I have no doubt it smells more when melted.

Question. Are not articles put up in pickle frequently sold here, perfectly good after a lapse of twelve months?

Answer. When put up for the purpose of exportation.

Question. Was there any damage to theg in, other than the exterior marks?

Answer. No, sir.

Question. Did you see any of the segars?

Answer. I saw them after they were discharged.

Question. Were they good or bad?

Answer. Those I saw were wet and mouldy.

Question. Were there no exterior marks on the boxes?

Answer. I have not seen any.

Question. Did you see the peas?

Answer. Yes, sir.

Question. What was the condition of the bags?

Answer. At their discharge they were in good order; I saw some at Messrs. Mayers with small stains.

Question. Did you see the cheese at Mayer and Brother's store?

Answer. Not that cheese; I have seen the Edom cheese.

Question. Is your freight bill unpaid?

Answer. We paid part of the freight.

Question. Was any claim met by you at the custom-house?

Answer. No, sir.

Question by Mr. J. Fallon How many kinds of cheese were there in the vessel?

Answer. I have seen two kinds, positively, Edom and Lymbergher.

Question. Do you know where about they were relatively stowed in the vessel?

Answer. I don't.

Question. You didn't see the Edom cheese opened?

Answer. No, sir.

Question by Mr. Kane. Are you familiar with Edom cheese?

Answer. Yes, sir.

Question. What cheeses did you see come out of this vessel?

Answer. The Edom and Lymbergher.

Question. In what condition was the Edom cheese, at Mayer's store?

Answer. Very good.

Question. Is the Edom cheese easily injured by a voyage.

Answer. Very easily.

Question. Just think a moment; do you know how it is made?

Answer. Yes, sir.

Question. What is the difference?

Answer. One is very dry, and the other very soft.

Question. Is the Edom cheese salt and hard?

Answer. Yes, sir.

Question. What is the shape?

Answer. Round.

Question. How is it packed?

Answer. In boxes.

Question. Would it be injured by salt water?

Answer. Yes, sir.

Question by the Judge. Is it what we call the Dutchman's head?

Answer. Yes, sir.

Thomas B. Davis, sworn for respondent.

Question by Mr. J. Fallon. With what firm are you in business here?

Answer. The firm of Aslier & Davis.

Question. Had you any goods by this vessel?

Answer. 127 pipes of gin.

Question. What was the outside condition of the casks?

Answer. What I saw were blackened, but in good condition; that is to say, all the hoops.

Question. Were they stained by salt water?

Answer. It was caused by being a long time in the hold of a vessel.

Question. Was this stain all over the casks?

Answer. The cask was stained equally all over, except the head, which was pretty bright.

Question. Have you seen casks stained by salt water?
Answer. Yes, sir.
Question. Is the stain of a different character, or not?
Answer. I think salt water would injure it more.
Question. Did you see this vessel discharged?
Answer. I was there twice.
Question. Did you see any cheese on board?
Answer. Two or three boxes.
Question. What was its condition?
Answer. It appeared as if it had run out.
Question. Do you know how it is, or ought to be, packed?
Answer. For my own part, I order it to be put up in sheet lead.
Question. Is that the usual way?
Answer. Yes, sir.
Question. Why is it preferable?
Answer. If not done so, it becomes a mass, and will be apt to leak out of the boxes.
Question. That will happen, to a great extent, if the voyage is very long?
Answer. Yes, sir.
Question. What do you call an average passage from Rotterdam here?
Answer. Six weeks; forty-two days.
Question. How long have you been importing?
Answer. Since I was a boy, I have been connected with the Rotterdam trade.
Question. Did you see the herring?
Answer. I saw a parcel on the vessel.
Question. What was the outside condition?
Answer. It appeared to be crusted with somthing white.
Question. Would herring casks spoil from being immersed in salt water?
Answer. I should judge not.
Question. Are they readily injured by the sun?
Answer. I should think they were; I always keep mine out of the sun as much as possible.
Question. How long had they remained lying there?
Answer. I don't know, sir.
Question, by Mr. Philips. You don't deal very largely?
Answer. Yes, sir; I import on my own account.
Question. What is the average passage from Rotterdam?
Answer. Forty-two days; seldom longer than sixty days.
Question. You say these casks were stained?
Answer. Yes, sir.
Question. Do you know how they stood in the hold?
Answer. Ends together, and the two ends were not discolored.
Question. Your house has nothing to do with the ship?
Answer. Nothing further than paying freight.

N. F. Comley, sworn for respondent.

Question by Mr. J. Fallon. Are you an auctioneer?

Answer. My brother is, and I am clerk with him.

Question. Did you or your brother sell at auction the cheese in question?

Answer. I don't know that; but we sold some for Mayer & Co.

Question. Have you the amount?

Answer. I have a memorandum. We sold sixty-five boxes of cheese on Friday, the 4th of June.

Question. At what hour in the day?

Answer. Somewhere between 11 and 12; I don't recollect precisely.

Question. When did you first receive the order to sell these things?

Answer. During the time my brother was crying the sale, Mr. Mayer came in and said that he had a lot of things to be sold at once; and he requested me to ask my brother to stop the sale, and go out and sell them on his pavement; and our sale was stopped, and we went and sold them.

Question. You only got the notice a few hours before you sold them?

Answer. Yes, sir; and the sample was on the pavement.

Question by Mr. Philips. What kind of sale were you having?

Answer. Groceries.

Question. A pretty large company?

Answer. A large company.

Question by Mr. J. Fallon. Did you sell herring at the same time, and under the same circumstances?

Answer. Yes, sir; and this account (—) embraces the herring as well as the cheese.

Question by the Judge. Were you selling other cheese at the time?

Answer. Not that I know of.

Question. Were you selling any herring at that time?

Answer. I think not.

Question by Mr. J. Fallon. Your brother saw the samples, you say, and not you?

Answer. Yes, sir.

Question by the Judge. The application was made to you, in the first place, by Mr. Mayer?

Answer. I was the only person who saw him.

John Galuly, sworn for respondent.

Question by Mr. J. Fallon. What is your business?

Answer. I work for stevedores.

Question. Were you employed in the discharge of this vessel?

Answer. Yes, sir.

Question. Was there any stevedore employed?

Answer. No. The captain hired me and another man.

Question. State with regard to the general stowage of the cargo and the dunnage.

Answer. There *was* two tiers of liquor first, fore and aft, and then there were other things on the top.

Question. State the general condition of the cargo.

Answer. The boxes that first came out looked in good condition; and there *was* a few spots on some of them; and, as to the liquor, it was well dunnaged.

Question. Was the hold dry?

Answer. It looked a little damp, but down by the kelson it was dry, much dryer than in the wings of the vessel.

Question by the Judge. How long have you worked unloading vessels?

Answer. About two years.

Question. What was the condition of this vessel compared with other vessels?

Answer. The same as any other cargo; the herrings were not so well stored as the rest of the cargo.

Question by Mr. J. Fallon. Was the cargo generally well stored?

Answer. Yes, sir; it was as well dunnaged as any vessel could be.

Question. Did you see the cheese opened?

Answer. I saw a box broken, and could see the cheese through.

Question. What was its condition?

Answer. It smelled strong, and I believe it was the dirt on the herring keg.

Question. Did you examine any herring?

Answer. We knocked out three or four heads, and seen the herring.

Question. What was their condition?

Answer. I am not a good judge of Dutch herring, but there was not much brine about them.

Not cross examined.

Joseph Orr, sworn for respondent.

Question by Mr. J. Fallon. What is your business?

Answer. Custom-house officer.

Question. Were you on board this vessel before the hatches were opened?

Answer. She arrived on the 17th May, and I went on board the 18th, and they had just opened the hatches, and I requested the captain to shut them up. He stated he wanted to let the fresh air in, as he had a great deal of cheese on board; they were the main and forward hatches which were opened.

Question. You remained on until she was discharged?

Answer. Yes, sir.

Question. What was the appearance of the vessel?

Answer. Bad, for I examined the vessel after the goods were out, and don't know the condition of the cargo.

Question by Mr. Philips. Did she arrive on the 17th.
Answer. Yes, sir.
Question. You saw nothing more than you have stated?
Answer. No, sir.

Jacob Beck, sworn for respondent.

Question by Mr. J. Fallon. What is your business?
Answer. Tobacconist.
Question. How long have you been in this business?
Answer. Sixty odd years.
Question. Did you examine these segars?
Answer. Yes, sir, at Mr. Mayer's.
Question. In what condition did you find them?
Answer. They were mouldy; and there is no doubt on my mind that it occurred from being put up too damp in the boxes, and it is frequently the case.
Question. Will the length of the voyage have any effect upon them if put up in that condition?
Answer. If they are put up too damp they will mould any where in a short time.
Question. Was there any appearance indicative of their being wet with salt water?
Answer. Not, I think; and I examined them particularly.
Question. You can speak with considerable confidence in regard to that fact?
Answer. I am certain of it.
Question by Mr. Philips. Were there any stains upon the boxes?
Answer. Not more than is common upon Havana boxes.
Question. Any indication of salt water?
Answer. No, sir; Havana segars get mouldy and rotten, too.
Question by Mr. Fallon. Are you in the habit of being called upon by surveyors?
Answer. I never knew a surveyor contradict my opinion on tobacco and segars.

Thomas H. Vetterline, sworn for respondent.

Question by Mr. Fallon. Are you in the tobacco business?
Answer. Yes, sir.
Question. For how long?
Answer. Partially and generally for twenty-eight years.
Question. Did you examine those segars at Mr. Mayer's store?
Answer. Yes, sir.
Question. What was their condition?
Answer. The boxes were entirely clean, with the exception of two which were stained; and it is frequently the case that the boxes are untarnished, and the segars are actually rotten; I have seen a sample of this kind this morning. [Shows some to the court.]
Question. What is the cause of that?

Answer. Segars in Germany are packed too wet.

Question. Could this damage have proceeded from salt water?

Answer. No, sir, it could not.

Question. Are you positive the damage to these segars was occasioned by sweating?

Answer. Yes, sir, and but one large case had a spot inside.

Question by Mr. Philips. When did you go?

Answer. The 9th of June.

Question. At whose instance?

Answer. One of the firm of Welsh & Co.

Question by Mr. Fallon. You went with Mr. Beck?

Answer. Yes, sir.

Mr. Madeira affirmed for respondent.

Question by Mr. Fallon. Are you in the employ of R. & W. Welsh?

Answer. Yes, sir.

Question. When did your firm hear of any complaint with regard to the goods?

Answer. Last Monday week.

Question. Have you had any complaints from any body else?

Answer. I have heard of none.

Question. The cargo consisted of what?

Answer. The bulk was gin, and other kind of merchandise; I am not prepared to say what; and, by the bills of lading, I noticed 216 kegs of herring.

Question. Have they paid the freight, and when?

Answer. On the 2d of June they paid the freight; I know by the cash book.

Question. What communication had you of the complaint?

Answer. The first knowledge of any difficulty was the captain coming into our office, with a notice of a libel served on him. It was six o'clock, Saturday evening. The captain was unable to explain the difficulty, and I called on Mr. Mayer to know what it was; and it was a complaint from Messrs. Mayer on account of damaged goods. I wrote to Mayer and Brother the following letter, dated June 7th, 1852, [reads the letter;] and it was sent on the afternoon of the 7th. Tuesday morning Mr. Mayer came down and saw Mr. Samuel Welsh. I was not present at the interview. Mr. Mayer told me the herring had been disposed of at auction, and asked me to go and see the condition they were in. Mr. Mayer said they were sold at Comley's auction store. Comley told me they had a sample of each kind which had been sold by sample. They had never seen or heard of them prior to Mr. Mayer coming there while the sale was going on. He said they had not attended to the delivery of them, and that they had no difficulty in collecting the bill; and that Mr. Mayer delivered the goods. I think it was Wednesday, the 9th, I made an appointment with Messrs. Beck and Vetterline to examine the segars. We saw the segars that Mr.

Mayer pointed out as being on board the galliot. He showed us a fair sample. On the shelf we saw some two or three boxes fallen to pieces from dampness, and the segars in which were very much broken. Others showed no marks of damage whatever. Some were opened, and we found them mouldy. On the following morning I went with Messrs. Kraft and Hartman to examine the herring. They were in a cellar near to Mr. Mayer's store. I think there were sixty-eight tubs of Swiss cheese, and some Lymbergher cheese. One tub of Swiss had been opened; the inside appeared to be bright, but the outside was discolored. On opening the cases of Lymbergher cheese, the straw was discolored and mouldy, and the cheese was soft; in fact, the smell was very offensive.

Question, by the Judge. Was the cheese in metallic cases?

Answer. The Lymbergher cheese was packed in straw, in kegs four inches by three inches.

Question. Enclosed in lead or tin foil?

Answer. I saw nothing of that kind. I saw some fifteen packages of herring, and Mr. Mayer said they were all that had been left; the other had been sold. Some few kegs were not full of pickle, and in handling them I thought they were soft. Two or three kegs they took from the top of the pile, seemed in good condition, and the outside was discolored. On Friday afternoon, I went up with Mr. Monte de Rosey, and found the cheese had been removed, and Mr. Mayer said he would send for the purchaser. Mr. Stevens came there, and said he was the purchaser. I asked to look at them, and he said they were removed out of town. I asked to see some Edom cheese, and it looked bright and in good condition.

Question. When you were told the herring had been conveyed away, did you see them afterwards?

Answer. No, sir.

Question. When you went, what answer did you receive?

Answer. He said, if I recollect right, that the herring were all sold.

Question, by Mr. Philips. You spoke of other herring; were they sold at auction?

Answer. Some persons told Mr. Welsh they were sold at another auction; and I went to Richards and Miller, and they said on Friday morning they sold a lot of herring.

Question. Mayer & Brother had nothing to do with the designation?

Answer. No, sir.

Question. You say the cheese was not in tin foil?

Answer. The two cases I saw.

Question. [Showing an instrument.] Is this the check?

Answer. I have no doubt that is Mr. Mayer's signature.

Question. Have there been other claims for damage?

Answer. I have heard of none.

Question. Have you heard of the piano?

Answer. I heard of it yesterday morning; and there was a piano on board, sir.

Mr. Fallon. We offer in evidence the certificate of Mr. Beck, showing their recollection is correct.

Mr. Philips. I offer in evidence the check for $254 11, dated June 2d.

Mr. Goldsmith, sworn for libellants.

Question by Mr. Philips. Do you recollect the day the surveyors examined these goods?

Answer. I think Thursday, 4th June; but I am not positive.

Question. Were any cheeses packed in lead foil?

Answer. The first boxes I saw were packed in straw, and the other in lead foil.

Question. How many in lead foil?

Answer. Several of them.

Question by Mr. Fallon. Were you there when the surveyors examined the cheese?

Answer. I think I was.

Question by Mr. Kane. You didn't go with the goods to auction?

Answer. No, sir; I was told the auction took place on Friday morning.

Question. Who told you?

Answer. Mr. Mayer.

Question. When?

Answer. The same morning.

Question. Have persons examined these goods since Friday morning?

Answer. I don't recollect.

Question. Have any persons examined the segars since then?

Answer. Those Mr. Mayer sent for.

Question. Who were they?

Answer. Mr. Crisman and Soby.

Mark R. Albertson, sworn for complainants.

Question by Mr. Philips. Are you an U. S. officer?

Answer. Yes, sir.

Question. What?

Answer. Deliverer and receiver of liquors at the custom house stores.

Question. Did you see any of the goods imported by Mayers in the Dutch galliot?

Answer. Yes; the cheese marked "J. K." I believe I saw some herring, which the furniture cars took away; and I also received the gin.

Question. What was the appearance of the cheese and herring?

Answer. The herring was not permitted to be unloaded at all; and the cheese we wanted to get shut of as soon as possible.

Question. Did you charge any duties on the cheese?

Answer. I think not.

Question. Was it packed in tin foil?

Answer. What I saw had been packed in tin foil; but the foil and cheese were all in a mass.

Question. Were the boxes stained with water?

Answer. They were stained black; I didn't taste whether it was ink or sea water.

Question. Is it one or the other?.

Answer. Yes, sir.

Question. Was it from damp?

Answer. We never have packages colored in that way from the dampness of the hold.

Question. The herrings were ordered away, and you charged no duty on them?

Answer. I believe not. I advised Mr. Mayer to haul them out of town and bury them.

Question. How long have you been in the employ?

Answer. Two years.

Question. You have frequently received herring and cheese?

Answer. That is my duty.

Question. Did you see some wine marked "J. K., No. 13?"

Answer. Yes, sir; I opened a case this morning.

Question. What was its condition?

Answer. The straw inside was wet.

Question. The public stores are dry, are they not?

Answer. Yes, sir, they are dry.

Question. It was not wet with wine?

Answer. No, sir.

Question. Did you see any leather skins?

Answer. Two cases, and one opened.

Question. What was their condition?

Answer. The one I *seen* was damaged.

Question. By water?

Answer. Yes, sir.

Question. Have you any doubt about it?

Answer. It could be nothing else; the mark of the skins is "C. P.," I think.

Question by Mr. Fallon. You say the 216 kegs were in the same condition?

Answer. They might have been the same lot; I saw them in the furniture cars.

Question. Did you see the inside?

Answer. I saw one opened, and it was taken out of the furniture cars.

Question by Mr. Kane. How long have you been in your present situation?

Answer. Two months.

Question. What was your business before that?

Answer. Packer.
Question. Where?
Answer. In the same building.
Question. How long, altogether, in the custom-house?
Answer. Going on two years.
Question. What was your business before going there?
Answer. Stone breaker.
Question. Do ink and salt water make the same stain?
Answer. Yes, sir; bilge water will blacken any thing.
Question. Are there any others who occupy the same position with yourself?
Answer. One, sir.
Question by Mr. Philips. What is your duty?
Answer. It is to open cases and take goods out, and unpack them.
Question. Have you any doubt about your seeing the sea water marks?
Answer. No, sir; the proof is by tasting the casks.
Question. Did the casks of gin exhibit the same?
Answer. Yes, sir.

Meyer Gans, sworn for libellants.

Question by Mr. Philips. You are of the firm of Gans, Brother & Company.
Answer. Yes, sir.
Question. Had you any goods in the galliot?
Answer. My father-in-law sent some wine to my care, and I was not authorized to take them out of the custom-house.
Question. You act for him?
Answer. Yes, sir.
Question. How many boxes of wine?
Answer. Twenty-four boxes.
Question. What is their condition, if you have seen them?
Answer. I saw them damaged, in the way Albertson speaks of.
Question. Were there stains outside the boxes?
Answer. The boxes looked black.
Question. A black stain?
Answer. Yes, sir.
Question. Did you see the pipes of gin?
Answer. Yes, sir.
Question. Had they stains on them?
Answer. More so than the wine.

Mr. Philips offers in evidence the bill of the auctioneer, to show the condition of the herring; and that there was but one sample of cheese and herring on the pavement, by which the remainder were sold.

Afterwards, to wit, on the sixteenth day of June, A. D. 1852, the libel, answer, and depositions having been read, and the argument of the several proctors being heard thereupon, it is ordered, adjudged,

and decreed, that the said libel be dismissed, with costs; and that the claim of the respondents for damages be dismissed.

Whereupon, afterwards, to wit, on the eighteenth day of June, A. D. 1852, the libellants pray leave to appeal from the said decree dismissing libel, to the next circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit; which is allowed, upon security being given.

On which said eighteenth day of June, A. D. 1852, on motion of respondents, leave is granted to amend answer; which said amendment is in the words following, to wit:

Amended answer.

To the honorable John K. Kane, judge of the district court of the United States, in and for the eastern district of Pennsylvania, in admiralty.

Hendrick Eddes, master of the Dutch galliot Venilia, for further answer to the libel and complaint of Samuel Mayer and Henry Mayer, comprising the firm of Mayer & Brother, alleges and articulately propounds as follows:

First. That, on the fifth day of June, the marshal, under the writ issued by your honorable court at the instance of said libellants, took possession of the vessel of this respondent aforesaid, and retained possession of her till the afternoon of the twelfth day of June aforesaid.

Second. That, at the time his said vessel was seized as aforesaid, respondent could have obtained freight which was then offered to him, and was ready for him to take on the seventh day of June, sufficient in amount to load his vessel on her return voyage; which freight the said vessel was then, to wit, on the said fifth day of June, ready to take, and would have obtained and taken, but for said seizure.

Third. That in consequence, and by reason of the said seizure, the said vessel lost the said freight, and that he was unable to obtain any other freight in lieu thereof in Philadelphia; and that the best arrangements he could make to obtain any freight was to enter into an agreement, on the fifteenth day of June, to proceed to North Carolina to take in freight; and that said vessel, in consequence thereof, has been detained from the time she was first attached and taken possession of by the marshal as aforesaid, to the present time, and will be so further detained until her arrival at Wilmington, to take in the freight to be obtained at that port.

Fourth. That the actual cost and expenses of the said vessel, including the pay of the officers and mariners, who are eight in number, was not, and could not be, less than twenty-five dollars daily; in addition to which this respondent, on behalf of the owners of said vessel, has necessarily incurred great expense in defending said libel, and will still have to incur further expense to the same end.

This respondent, therefore, respectfully prays your honorable court to allow him to amend his answer as above, and to grant him a re-

hearing in the matter of the said libel; and to pronounce and decree against the said libellants that they should pay to this respondent, as well the necessary expense and cost of the detention of the vessel as aforesaid, as also an amount sufficient to cover reasonable counsel fees, for defending said action, and defraying other necessary expenses incident thereto, and otherwise right and justice to administer in the premises.

And he will ever pray, &c.

H. EDDES.

Sworn to and subscribed, this 19th day of June, 1852, in open court.

THOMAS L. KANE,
Clerk dist. court, U. S.

On which said eighteenth day of June, A. D. 1852, the argument upon the said amended answer being heard and duly considered, it is ordered and decreed by the court, that the claim for damages set forth by said answer be dismissed.

Whereupon the said respondents pray leave to appeal from the decree aforesaid to the next circuit court of the United States, in and for the eastern district of Pennsylvania, in the third circuit; which is allowed, on security being given.

UNITED STATES, *east'n dist. of Pennsylvania.*

I certify the foregoing to be a true and faithful copy of the record and proceedings of the district court of the United States, in and for the eastern district of Pennsylvania, in a certain plea, civil and maritime, therein lately depending, wherein Mayer & Brother were libellants, against the galliot Venilia, Eddes, respondent.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the said court, at Philadelphia, this eighth day of September, A. D. 1852, and in the seventy-seventh year of the independence of the said United States.

[Seal of the dist. ct. U. S., E. D., Pa.]

THOMAS L. KANE,
Clerk dist. court, U. S.

I certify the foregoing attestation to be in due form, and by the proper officer.

J. K. KANE.

UNITED STATES,
Eastern district of Pennsylvania.

I certify, that the Hon. John K. Kane, who has subscribed the foregoing certificate, was, at the time of so doing, and still is, judge of the district court of the United States, in and for the eastern district of Pennsylvania, duly commissioned and qualified.

In testimony whereof I have hereunto subscribed my name, and af-
[Seal of the district court U. S., E. D. Pa.] fixed the seal of the said court at Philadelphia, this eighth day of September, 1852, and in the seventy-seventh year of the independence of the said United States.

THOMAS L. KANE,
Clerk district court, U. S.

Afterwards, to wit, on the ninth day of September, A. D. 1852, the libellants, by their proctor, enter rule to take depositions on behalf of libellants, on twenty-four hours' notice to respondents or their proctor.

Depositions taken under the foregoing rule.

In the circuit court of the United States, in and for the eastern district of Pennsylvania.

MAYER AND BROTHER
vs.
THE GALLIOT VENILIA. } Contract.

Sur appeal from district court.

Depositions of witnesses, e. p. libellants and appellants, taken under rule before Charles F. Heazlitt, U. S. commissioner, at Philadelphia, September 27, 1852.

Present, J. Hill Martin, esq., for libellant and appellant, and witnesses; Mr. John Fallon, for the Galliot. Adjourned till Thursday next, 12, m.

Thursday, 30th September, 1852. Present, Mr. Martin and Mr. Kane.

George Kern, being duly sworn, says:

I am thirty-seven years of age and upwards; examiner of merchandise in the custom-house; I remember the arrival of the Venilia at this port, and the landing of her cargo; Messrs. Mayer and Brother had merchandise on board that vessel that was placed in the custom-house stores for examination; herring, anchovies, cheese, segars, and I think one bag of peas were sent up for examination; a portion of each article; I examined the articles as regards value; I cannot tell positively the condition of the goods sent to the custom-house for examination; I afterwards saw all the articles at their store, (Mayer and Brother's.)

On the 31st May, 1852, there was a damage form taken out; I was requested by the appraisers to call up to their store and look at them; I found the herrings in a very bad condition; there was a number opened, what proportion I can't tell from memory at present; upon the two hundred barrels of herring and the sixteen quarter barrels of anchovies I gave 85 per cent.; I considered them unmerchantable; the remission of duty was 85 per cent.; I considered them damaged to that extent. I was appointed clerk in the custom-house in 1845, and since 1848 I have been an examiner of goods; I consider myself a judge of

such matters. There were several kegs of herring which remained in the stores some fifteen months; I hunted for them the other day to compare them with these; they were among the missing; they told me they had thrown them out; I am not acquainted with the manner of putting up herring; I have examined herring from Bremen and Rotterdam fifty and sixty days out, and found them in good condition. I found these herring at Mayer's store in kegs water soaked, to every appearance as if they had been in water, and the kegs stained black; I should say decidedly the damage was from salt water, but whether from the pickle or sea water I can't say positively; there was a crust of salt on some of them; some of these casks had pickle in them, full, and others had not. These herring were not fit for use; I tasted some of them, and wouldn't have had them in the family at all. The invoice of these herrings was dated 4 December, 1851; vessel arrived in May, 1852.

I examined the cheese at Mr. Mayer's store; I examined six cases of Switzer cheese done up in tubs, in the usual way in which those cheeses are done; I found them very soft, (when sound they are generally hard,) and salt water in those tubs, on which I allowed 75 per cent.; I saw the water in the cheese and on the sides of the tubs, and tasted it; those cheese, in cutting open, have small holes in them, containing salt water, but I am satisfied the salt water I saw did not come from the outside of the cheese; the tubs outside were evidently stained with salt water; I cut one of the cheese; it was very soft; I did not taste it; I should consider, from the fact of the salt water in the tubs, that they were unfit for use, unless people would buy them and make themselves sick in eating them.

I examined sixty-five cases of Lymbergher cheese, marked B. & H. I examined four others, marked S. M. The whole sixty-nine cases I considered worthless; I had one-half or two-thirds opened, and judged of the condition of the others from the cases; they almost made me sick while I was in the cellar; I pronounced them worthless, and charged no duty.

Those cheese, when in good order, are put up in tin foil, with divisions in the case for each cheese; all I saw were put up so; I examined them and found them so; the natural color of the cheese is light; these were variegated colors; assorted colors; the cases outside were stained, evidently, to the best of my knowledge, with salt water.

I can't say whether there had been salt water inside; the cheese were mushed up; but from the color on the boxes, I should say they were stained on the outside by salt water. Salt water makes a peculiar stain on the box. None of these cheese were packed in straw, to my knowledge. I examined a lot of round cheese, fifteen cases, Eadam cheese; that cheese, sound, is very hard. I can't say whether salt water had come in contact with them; the outside covering was gone, to a considerable extent, and a portion of the cheese was destroyed, but from what cause I don't know. These cheese were very badly damaged. I can't make a separate estimate of the value of this cheese;

but in estimating the duty on peas, and these cheese, I gave 50 p. c. There were thirty-two bags of peas which I examined; the bags were stained with salt water, (a number of them,) and musty. I made the allowance upon the peas and cheese together.

There were ten cases of segars, on which I gave 50 p. c. I don't know how many segars were in those cases—good sized cases. I found a number of segars mouldy, and saturated with water—some mouldy and some saturated; the boxes containing the segars stained with salt water on the outside cases. I opened quite a number on each case; the boxes on the outside were stained, and those containing the segars were stained. I opened some of the inside boxes and examined the segars; you could squeeze the water out of a number of them; some were mouldy from dampness, not from sweating. I know that where segars are shipped green they will become mouldy. I can tell by squeezing them, and the weight, whether it [is] from sweating or from water.

Question. Were these segars damaged by sweating or by water?

Answer. Some of them were undoubtedly wet with salt water, and the others, being in bad company, were damaged.

I examined twenty-four casks of wine, which had become sour, come in the same vessel. The wine was "light wine." I gave 50 p. c. remission of duty. As it was sour, it might be fit for vinegar.

Other parties asked for remission of duties for goods by the Venilia. Mr. Alex. Filliot *he* had 200 kegs herring and five boxes of anchovies on board. I examined them. I gave on the herring, 80 p. c., and on the anchovies, 84 p. c.; they were sour, actually unfit for use. They were in the same condition as Mayer's.

Theodore Mann claimed a remission of duties; he had sundry cases of leather; three, I think, but I am not positive. I do not remember the amount of duties remitted. I examined them, and reported the damage to the naval officer. The leather was mouldy, but I can't say whether it was from salt water or from dampness in the hold. I went through them a second time with the surveyors of the port; they gave greater damage than I did.

I can't tell whether any body else claimed remission of duty, for damage, by this vessel. Our damage book would tell. There was a number of boxes of wine for M. Cauffman, having marks of salt water on them; he claimed an allowance, but the wine was not affected.

Cross examined.

I was in my brother's store, Fifth and Market, before I went into the custom-house. He was a hardware merchant. I never was employed in any mercantile capacity before; never in an importing house. I have been four years as an examiner in the custom-house—three to four years. There is one examiner beside myself. The duty of examiner is to examine merchandise, and to assess damage, when required by the appraisers. It is the duty of the appraisers to assess damages, to examine merchandise, appraise damages, and sign invoices

when examined. It is the duty of the examiner to make a report to the appraisers whether the invoice is correct. The goods by every foreign vessel *is* examined—a certain portion. We examine the samples sent up. I cannot state the average number of vessels arriving at this port in the course of a year; there may be six or eight; that is a matter I don't trouble about; there is one in port now I know.

I have seldom to examine Lymbergher cheese, Eadom cheese, herring, and anchovies. There is not as many vessels from Rotterdam as from Bremen.

The paper to which I have referred in my examination in chief is an exact copy of my return to the appraisers, taken from our damage book; the copy is annexed, marked A.

My other answers, independent of this paper, are from my best recollection. The paper was to refresh my memory as to marks, numbers, and quantity.

The wine was examined by samples; and a sample of each was examined at the custom-house. The next examination was made at Mayer's, in Third street, at the request of Mr. Martin or Mr. Withers, appraisers. A regular damage form was taken out, and I was requested to examine. The boxes of segars were opened, lid taken off; each box or outside case was opened, and by box I mean outside case. The boxes of segars were inside the case. I took the boxes promiscuously from the cases. I think the six cases of Sweitzer cheese were all opened, as far as my memory goes. I cannot say positively that I examined each case of Lymbergher cheese. I saw the cheese oozing out of some of the cases. I think I saw all the Edom cheese. I presume the cases of damaged goods corresponded as to marks with the damage; and I know them to have been imported in the Venilia, on that voyage. Mr. Mayer was present at this examination. I cannot tell if any body else was present. I cannot say that all the cases were stained with salt water, but they were all in a very bad condition; the cheese running through some of them may have stained them. I would have judged from the exterior that all the goods were damaged, but I can't say that the whole of them were damaged by salt water. Judging from the exterior, the following were damaged by salt water:

Six cases or tubs of Sweitzer cheese, of Lymburgher. I can't tell how many. My memory is not fresh. Of segars, I cannot say. I think I can mention three cases, but beyond that, I would not like to depend on my memory. Herring and anchovies I would put in the same lot, and judge from outside appearance. I could not say from the outside about the fifteen Eadom cheese. I examined them; looked at the inside; they were soft and damaged. I can't say what number of bags of peas denoted being wet by salt water. More than half a dozen presented such exterior marks. I took out some peas; they were musty. The damage must have been fixed four or five days after the damage form was taken out.

The peculiar mark on wood, of salt water, is dark, not black; on paper, is a crust white. The mark on wood is not as black as an ink

mark; it is a very pale ink color; four-fifths water, one-fifth ink; it is a very plain color; it goes through wood. Some of the kegs of herring I found full of pickle, and some, the pickle had gone; the pickle may have stained some of the kegs. I don't think the pickle would leave a crust; the herring was fat, like oil; and that might counteract the salt. I did not see any of these kegs damaged by breakage. All that I saw appeared sound.

Re-examined.

We have about twelve arrivals every year of vessels containing herring, &c., such a cargo as the "Venilia," and I examine a portion of all cargoes.

Those goods at Mayer's store not damaged by salt water were in a damaged condition, and it might have been from dampness of the hold, or some other condition. I believe the damage to have occurred on the voyage of importation; the goods were all charged fair in the invoice, and sound in condition.

Re-cross examined.

The examiners generally, all of us, appraisers and all, all bear a hand in the examination of goods by every vessel; and I only appraise damage when requested.

GEORGE KERN.

Sworn and subscribed, September 30, 1852.

CHAS. F. HEAZLITT, *U. S. Com'r.*

Henry Mayer is sworn to make true answers.

[Mr. Kane objects, Mr. Mayer a party in interest.]

Mr. Martin furnished me with a written notice to the captain of the Venilia, the day before the sale of the goods, (on Thursday.) I did not visit the vessel to serve the notice. I gave the notice to our young man, and told him to take it to the captain of the ship Venilia, and if he wasn't there, to take it to Mr. Welsh's. George Moore was the name of the young man. I read that notice. The notice was that the goods would be sold the next morning at Comly's auction store, and requesting him to attend, if he thought proper to do so. He came back. I asked him who he gave it to. He said he gave it to the captain of the Venilia.

Cross examination declined.

HENRY MAYER.

Sworn and subscribed, September 30, 1852.

CHAS. F. HEAZLITT, *U. S. Com'r.*

George Möhr, being duly sworn, says:

I am twenty-seven years of age; clerk for Mayer and Brother. I remember goods by the Venilia being sold by auction. On the Thursday before that sale, Mr. Mayer gave to me a note to take to the cap-

tain of the Venilia. He (Mayer) told me to go to the vessel and find the captain, and give it to him; if you can't find the captain, go to Welsh's. I went to the vessel, inquired for the captain; they told me he was down there (on the vessel.) I gave the captain the letter; the captain says: "Very well, it's all right."

Mr. Martin calls upon the proctor for respondent to produce that paper, so served upon the captain.

Cross examined.

I work sometimes in Mayer's cellar, and make ready the goods that are sent away; pack the boxes, nail them up, and send them away. I do not keep their books for Mayer. I do just as I am told. They tell me to get a box ready; I do as I am told.

Question. Do you carry messages for them?

Answer. I don't know what it means. I carry notes for them; they tell me to go to such a place; I go. This note was given on a Thursday. I did not read the note; I cannot read notes. I could not read what was written on the outside; he just told me to take it. The note was given me about five o'clock in the afternoon. I delivered it about ¼ past five o'clock. I gave it to the captain. I had never seen the captain before. I saw a man on board. I asked him if he was captain; he said yes. I told him I had a note for him. He took it, opened it, and said it was all right. I never saw the captain after that. I can't tell exactly what kind of looking man he was; I just gave it to him, and came away. I was born in Germany; have been four years nearly in this country. I worked for Engel and Wolf over two years, seven months. E. and W. are German brewers; talked German to them while employed there. I came to Mayer after leaving E. and W. I speak German to Mayer every time.

GEORGE MÖHR.

Sworn and subscribed, September 30, 1852.

CHAS. F. HEAZLITT, *U. S. Com'r.*

Adjourned till Monday next, 4½ p. m.

Monday, October 4, 1852.

Mr. Martin, for libellants; Mr. Kane, for respondents.

Alexander Fillot, being duly sworn, says:

I am about thirty-one years; a brandy merchant. I remember the arrival of the Venilia at this port. I had some goods on board, herrings and anchovies; 200 kegs of herrings and 100 pots anchovies. The herrings, when delivered, were good for nothing. I am no great judge of herring, and the only reason I can give for their being worthless was their being in the hold of the vessel for six months. My bill of lading is dated 8 December, 1851. They were sold, that is, the herring and anchovies were sold for nett $37 27; they cost $120. Interest, &c., made cost $178. The herrings I could have sold, if they had come in a good condition, between $1 and $1 12½ a keg; they

brought 17 c. The anchovies I could have sold from $11 to $12 a case, and they brought $1. The custom-house appraisers allowed me 84 p. c. on the herring and 85 p. c. on the anchovies. They were insured in Rotterdam. I cannot get my insurance, because there had not been a survey. Mr. Zeigler told me there had not been a survey.

Question. By the mercantile usage of this port, is not a vessel not holding a survey on board responsible for damage on board?

Answer. That I don't know. This went into Falmouth and in distress. I had to pay general average; my average amounted to 93 c.

I did not see any thing of the goods, except a part of the anchovies, which were brought to my office all mashed up. These things are entirely out of my line. Brandy and gin, and things of that kind, I know something about. I have been in business here three years.

Cross examination declined.

ALEX. FILLOT.

Sworn and subscribed, October 4, 1852.

CHAS. F. HEAZLITT, *U. S. Com'r.*

Theodore Mann, being duly sworn, says:

I am 45 years of age; bootmaker. I remember the arrival of the Venilia at this port. I think it was in August, or July, or June; I am not sure, I could see it in my papers. It was in May. I had some goods on board of that vessel; one cask of wine and three cases of leather—calf skins. The leather was somewhat damaged. I can hardly tell what caused the damage. At the custom-house they told me to get another bootmaker to examine it; he thought it was damaged by salt water. I doubted it; it looked so; it was damaged, but whether it was by salt water it is a hard matter to tell; that is a matter that I couldn't say positively. If it was not by salt water, it may be from being so long on a voyage it got damp; if it wasn't by salt water, it might have occurred in that way. When skins are in a damp hold, a lengthy voyage will damage them. I was insured. I did not insure myself; the merchant from whom I bought had it insured. I wrote to him; he requested me to send the necessary papers; I did so, and sent to him. He wrote to me, only a few weeks ago, that in a short time he would recover the balance of insurance. The leather was sold here by auction.

Cross examined.

The heat will make leather dry; but when it is confined in a place like the hold of a vessel, it will get damp—mouldy.

THEODORE MANN.

Sworn and subscribed, October 4, 1852.

CHAS. F. HEAZLITT, *U. S. C.*

Mr. Kane states, in reply to Mr. Martin's call for production of notice, alluded to by Mr. Mayer and George Möhr, that no such notice had been received by the respondents, so far as he is informed.

Adjourned till Thursday, 4½ p. m.

Wednesday, 6 October, 1852; met pursuant to agreement.

John Burton, being duly sworn, says:

I am 32 years of age; a shipping merchant. I have been in the business about ten years—a member of the firm of Penrose and Burton. When our vessels arrive at this port we hold a survey upon them; it is not obligatory upon us to do so. We hold the survey to show that the cargo was properly stowed and dunnaged.

Question. If a vessel arrive at the port of Philadelphia with a cargo in a damaged condition, and lands it without holding a survey on board, is not the vessel considered responsible by the mercantile custom of the port of Philadelphia?

Answer. That has always been my impression; I always thought so. When a vessel arrives here with goods in a damaged condition, the captain makes his protest, and calls a survey; that protest is noted and survey held for the purpose of relieving the vessel from liability. That has always been our belief. We always have done so.

Cross examined, Mr. Kane.

[Mr. Kane objects to the whole of this deposition as irrelevant.] I suppose that proper stowage or dunnage could be proved by a stevedore. I don't know that it would be legal; the custom is to call the proper officers. We have never depended on any one else. We have always considered it necessary to call surveyors; it is done for the protection of the vessel. I believe, if a survey was omitted, it would prejudice my case very much. I should say it was necessary to hold a survey, so far as I know.

JOHN BURTON.

Sworn to and subscribed, this 6th October, 1852.

CHAS. F. HEAZLITT, *U. S. C.*

John R. Penrose, being duly sworn, says:

[Mr. Kane objects to the whole of this deposition, as irrelevant.]

I am about 39 years of age; a shipping merchant. When our vessels arrive at this port with goods on board in a damaged condition, we invariably hold a survey; first note a protest. Our object in doing this is to protect the ship. In the event of the cargo being damaged by stress of weather, we want to prove that fact, and that the cargo was properly stowed and dunnaged, and thus clear the ship.

Question. If a vessel arrive at the port of Philadelphia with a cargo in a damaged condition, and lands it without holding a survey on board, is not the vessel considered responsible by the mercantile custom of the port of Philadelphia?

Answer. I should think she would be. I have never had a case of the kind, but I have always considered that the custom. I mean we never had a case of the kind that we neglected. We consider our whole dependence on the survey. We hold a survey upon the hatches,

and on the stowage of the cargo, to see that it is properly stowed and dunnaged, or whether it was damaged by stress of weather.

Cross examination declined.

JNO. R. PENROSE.

Sworn to and subscribed, 6 October, 1852.

CHAS. F. HEAZLITT, *U. S. C.*

Thursday, 7 October, 1852.

Edmund A. Souder, being duly affirmed, says:

I am about 47 years of age; a shipping merchant.

Q. If a vessel arrive at the port of Philadelphia with her cargo in a damaged condition, is she not, by the mercantile custom of this port, considered responsible for such damage?

A. If she has not noted a protest and called a survey upon the hatches, and upon the goods damaged, she is considered responsible.

Q. If a vessel is so considered responsible, what steps do merchants take to release the vessel from liability, in case the cargo is damaged?

A. To relieve the vessel from such liability, the consignees would cause the captain to note a protest soon after his arrival, call the surveyors of the port before opening the hatches, and hold a survey upon the hatches and cargo. I always do this with vessels consigned to me. I do it invariably. It is the first question to ask the captain to note a protest; and I do this to protect the owners from liability for damages.

Cross examined, subject, &c.

A vessel not having had a survey is liable, although she shows, by proper evidence, that the stowage of the cargo was all right, and the dunnage as it should be; I mean by other evidence. I consider the survey the only proper evidence.

EDM'D A. SOUDER.

Sworn to and subscribed, October 7, 1852.

CHAS. F. HEAZLITT, *U. S. C.*

Entered in appr's book, June 5, '52; damage form dated 31, '52.

S. M. B. 24 casks wine, 50 p. c.

A. G. D. 3810 | 3815 6 cases cheese, (75 p. c.,) Switzer.

B. & H. 3050 | 3102 65 do. do. Luby, worthless.

S. M. & B. 1*a*10 ten cases segars, (50 p. c.)

S. M. 200 bbls. herring, } 85 p. c.
S. M. 16 qr. anchovies, } Total.
S. M. ¼ 4 cases cheese, Limeb'g, }

M. & B. 1*a*15 15, round, } 50 p. c.
P. M. 32 bags peas, }

Shipped at Rotterdam, Dec. 4, '51.

Alex. Fillot, June 9, '52.

F. C. $200\frac{1}{18}$ kegs herrings, 80.

□ 5 boxes, 100 pots, anchovies, 84 p. c.
May 27, vessel entry at c. house.

A.

C. F. H.

Decree.

Whereupon, afterwards, to wit, on the first day of November, A. D. 1852, all and singular the matters being duly considered, and the arguments of the several proctors being heard, it is decreed by the court here that the decree of the said district court be affirmed with costs.

Appeal.

And thereupon, afterwards, to wit, on the fourteenth day of April, A. D. 1853, the said libellants pray leave to appeal from the said decree to the Supreme Court of the United States; and the same is allowed, upon security being given.

Agreement to amend the record.

Afterwards, to wit, on the eighteenth day of March, A. D. 1833, a rule is entered for a motion to show cause why an appeal to the Supreme Court of the United States should not be allowed; and why the record should not be amended, as follows, viz:

The libellants ask the court to strike off the amended answers sworn and filed on the nineteenth day of June, 1852, the same having been filed three days after the case was tried and decided in the district court.

And that the amended answer, sworn and served upon the libellants on the sixteenth day of June, 1852, may be admitted as a part of the record, as it ought to be, it having been omitted in the record from the district court.

The libellants ask that the following papers, referred to by the witnesses, may be admitted and filed of record in this case:

1. The protest at Falmouth, and surveys held there.
2. The report of the surveyors of damaged goods, 5 June, 1852.
3. Custom-house copy of the invoice of goods, 2 June, 1852.
4. Check of Mayer & Bro. to S. & W. Welsh, for the freight, dated 2 June, 1852.
5. Invoice of damaged goods, sold at auction, 4 June, 1852.
6. The custom-house appraisement of damage.
7. Copy of the motion to sell damaged goods not before disposed of, which rule was refused.

It is agreed that the rule to amend the record in the above case be made absolute; the words "not before disposed of" being first stricken out of the last clause.

JNO. FALLON,
For respondents.
MARTIN,
For libellants.

18 April, 1853.

To the honorable John K. Kane, judge of the district court of the United States, in and for the eastern district of Pennsylvania. In the admiralty.

And now comes Hendrick Eddes, the master of the Dutch galliot Venilia, and prays leave to amend his answers filed in the cause now pending before this honorable court against the said galliot, wherein S. Mayer and Brother, of Philadelphia, are libellants, by adding to the third article thereof in the words following, to wit:

"That by the terms of said bills of lading, said goods and merchandise, with the exception of one box marked and numbered (4 A. S. No. 1,) were shipped without liability on the part of said vessel for damage to the same, under an express stipulation forming part of the contract of shipment, as will appear by the originals of said bills, when produced before this honorable court.

H. EDDES.

FALLON.
KANE.

Sworn to and subscribed, this 16th day of June, in open court, 1852.

THOMAS L. KANE,
Clerk district court, U. S.

To all to whom this public instrument of protest shall come:

I, William James Genn, of Falmouth, in the county of Cornwall, notary public, by royal authority lawfully admitted and sworn, and also a master extraordinary in the high court of chancery of England, send greeting:

Know ye, that on the thirty-first day of January, one thousand eight hundred and fifty-two, before me, the said notary at Falmouth aforesaid, came and personally appeared Hendrick Eddes, master or commander of the good galliot or vessel Venilia, of and belonging to the port of Dordrecht, of the burthen of one hundred and thirty tons per register, and did then and there enter and note with me his protest against the stormy winds and great seas he had and met with, in the prosecution of his voyage from the port of Rotterdam, in Holland, to the port of Philadelphia, in America. And also, on this sixteenth day of February, one thousand eight hundred and fifty-two, came again and personally appeared before me, the said notary at Falmouth aforesaid, the said Hendrick Eddes, and also Izaak Mathews d Waal, mate, Jan Van der Meiden, sailmaker, and Cornelius Wapenaar, seaman, of the said galliot Venilia, together with William Broad, the younger, gentleman, a person to me well known, as interpreter in the Dutch tongue or language, who first solemnly and sincerely declared and affirmed that he would well and truly interpret to the said Hendrick Eddes, Izaak Mathews d Waal, Jan Van der Meiden, and Cornelius Wapenaar, who did severally and respectively, solemnly and sincerely, declare and affirm, that on Saturday, the thirtieth day of December,

one thousand eight hundred and fifty-one, with the wind from the southeast and the weather fine, they set sail from Rotterdam aforesaid, in their said galliot or vessel, she being then tight, staunch, and well and sufficiently masted, manned, tackled, apparelled, and furnished for the sea, and for her intended voyage from Rotterdam aforesaid, with a general cargo, bound to and for the port of Philadelphia aforesaid; that in the evening of the same day, the wind being foul, they anchored in the harbor of Helvoetsbugs, and remained there until Friday, the twenty-sixth day of December, when the wind having become fair, they departed from Helvoetsbugs aforesaid, and prosecuted their voyage without any particular occurrence happening until Friday, the second day of January last, when, at about two a. m., the wind having changed to the northwest, and north-northwest, and freshened, they took in their studding sails, and hauled their said vessel close to the wind, steering by compass west southwest. That on Saturday, the third day of January last, they had the wind from the north and east with a stiff breeze and rain, which compelled them to reef their mainsail and mizzen, and steer northwest by west-half-west, and they continued to do so until about eight o'clock, p. m., when the wind having changed to the west-northwest, they were enabled to keep their course and steer west and north-northwest. No particular occurrence happened until Monday, the fifth day of January last, when, being in latitude forty-six eight north, longitude nineteen four west, at about midnight, it blew very hard from the northeast and north-northeast, accompanied with thunder, lightning and rain; and a heavy running sea, in which their said galliot or vessel labored and strained very much, and shipped a great quantity of water on deck. That they furled all their sails, and on Tuesday, the sixth day of January last, lay to until about four p. m. under a storm mizzen; that at the last mentioned day the weather became more moderate, and having the wind from the west and west-southwest, they set their mainsail and mizzen close reefed, and steered their course by compass west and north-northwest, their said vessel still laboring and straining much in the high sea then running; that they regularly attended to their pumps, but did not find that their said galliot had, up to the last mentioned date, made more water than she ordinarily did. On the following day the weather became more moderate, and they prosecuted their said voyage with variable winds and weather, taking in and setting sail, as circumstances required, without any particular occurrence happening until Saturday, the seventeenth day of January last, when, at about noon, they had strong gales from the southwest by west, in which they split their jib, and immediately took it in. That at about noon of Sunday, the eighteenth day of January, it blew very hard from the northwest by west, with a heavy running sea, and they were compelled to take in their staysail, mainsail, topsails, and mizzen, and to lay to under their storm mizzen until about three o'clock, p. m., when the weather moderated, and having the wind varying from the west to southwest, they set their mizzen mainsail and staysail close reefed and

bent, and set a new jib in the place of the one split as aforesaid. That at one o'clock, p. m., of the last mentioned day it blew strongly from the west northwest, accompanied by thunder, lightning, and rain, and a very high sea running, in which their said galliot labored and strained very heavily, and compelled them to take in their jib and stay foresail, and they lay to, tacking off and on, and attending as occasion required to the pumps.

That on Tuesday, the twentieth day of January, they deemed it necessary, in consequence of the weather continuing so very boisterous, to take in their gallant yard and sail and stow them. That on Wednesday, the twenty-first day of Junuary, being then in latitude forty-seven fifty-two north, longitude twenty-five twelve west, they had a very heavy gale from the west, with a high sea running, in which their said vessel labored and strained to a fearful extent, and at about half-past seven, a. m., a heavy sea broke on board and carried away their larboard bulwarks, which were entirely lost. That at about half-past twelve, at noon, they had a very heavy squall from the northwest, with a tremendously high sea, in which their said galliot strained very much, shipped a great quantity of water on deck, and was also struck with a heavy sea, which broke and injured their bowsprit and jibboom, flying jib and staysail; all of which fell overboard, and, being held by the ropes, stays, and other gear belonging to them, beat about the bows of their said galliot; and in order, as far as possible, to prevent damage to their said vessel, they cut away the ropes and other gear that attached *that attached* their said bowsprit, jibboom, flying jib, and staysail, to their said vessel, and the whole of them, together with the gear and tackle thereunto belonging, were lost. That they immediately afterwards cleared the wreck of their said vessel as well as they could, and on sounding their pumps found sixteen inches of water in the well. That they immediately pumped out their said vessel, and on attending to their pumps afterwards found that their said galliot made two inches of water per hour. That soon after the last mentioned period, their bower anchor, (which had been properly stowed on their starboard bow,) by the laboring and straining of their said vessel, broke adrift, and was, with tremendous force, thrown in on board of their said galliot, starting and carrying away with it two ring-bolts. That to prevent the said anchor from doing further damage on board they lashed it to the windlass. That throughout the night they continued to attend to their pumps, and still had very bad weather and a heavy sea. That in the morning of Thursday, the twenty-second day of January last, the weather somewhat moderated, and observing that their fore-topmast was in a very damaged state, (the stay thereof having been loosened by the loss of the bowsprit,) they sent aloft to inspect the same, and found that it was broken just below the gallant yard; and about four, p. m., of the said last mentioned day, in order to prevent accident and damage from the said broken mast, they cut it away; and the said mast, together with the gear attached thereto, went overboard and was lost. That on the morning of Friday, the twenty-

third day of January, being in latitude forty-six fifty north, and longitude twenty-four twenty-five west, they held a consultation, and determined to make for a port of refuge to repair the serious damage their said vessel had sustained; and for this purpose they immediately set a close reefed topsail and foresail, and scudded before the wind, steering by compass east-southeast, with the wind blowing very strongly from the west and northwest, accompanied by thunder, lightning, rain, and a very high sea. That on Saturday, the twenty-fourth day of January, at about four o'clock, a. m., whilst still scudding under the aforesaid sails, a very heavy sea broke on board their said galliot, about midships, and carried overboard the whole of their starboard bulwarks, together with one man, (the cook of their said vessel,) who was unfortunately drowned. That at this time there was a tremendously high sea running, in which their said vessel rolled, labored, and strained very much, the seas continually washing over her deck. That they continued to attend to their pumps, and found, that on the average, their said vessel made about two inches of water per hour. That the bad weather continued unabated, and they scudded before the wind, without any particular occurrence happening, until about nine o'clock, p. m., of Monday, the twenty-sixth day of January last, when, being in latitude forty-eight forty-three north, longitude thirteen twenty-six west, a squall came on from the west southwest, and they attempted to trail up their foresail, but before they could do so the said sail was split to pieces, in which state they furled it as well as they could. That on the twenty-seventh day of January last they continued to ship much water on deck, and a great quantity of it found its way into the cabin; they continued, however, regularly to attend to, and pump out, their said galliot. That about noon of Friday, the thirtieth day of January last, they made the Lizard, bearing east, distant sixteen English miles; at ten o'clock, p. m., they took on board a pilot, and at about midnight came to anchor in the inner harbor of the port of Falmouth aforesaid. And these declarants did solemnly and sincerely declare, that by means of the stormy winds, bad weather, and heavy seas, they had and met with as aforesaid, their said galliot Venilia, her tackle, apparel, and furniture, have sustained and received the damage, loss, and injury herein before mentioned and set forth, and may have sustained and received other damage; but that, whatever such damage, whether to the said galliot Venilia, or the cargo on board her, shall hereafter appear to be the same, and every part thereof, was and were wholly occasioned by and owing to the stormy winds, bad weather, and heavy seas they had and met with as aforesaid, and not by, or through, any neglect, default, or mismanagement of these declarants, or either of them, or any other of the said vessel's crew.

Whereupon I, the said notary public, at the special instance and request of the said Hendrick Eddes, Izaak Mathews d' Waal, Jan Van der Meiden, and Cornelius Wapenaar, have protested, and by these presents do hereby solemnly protest, against the stormy winds, heavy seas, and bad weather as aforesaid, for all losses, damages, and preju-

dices which the said galliot Venilia, her tackle, apparel, furniture, or cargo, or any or either of them, or any part thereof, or any person or persons interested therein, have or hath sustained, suffered, or received, or shall, or may sustain, suffer, or receive, by reason or means of the same.

In testimony of the truth whereof, I, the said notary public, have hereunto subscribed my name, and set and affixed my public and usual notarial seal, at Falmouth aforesaid, this sixteenth day of February, one thousand eight hundred and fifty-two.

(Signed) W. J. GENN,
Notary public and master extraordinary in chancery.

[NOTARIAL SEAL.]

I, the said William Broad, the younger, do solemnly and sincerely declare and affirm, that I have faithfully and truly interpreted the statements, in the foregoing instrument of protest to the said Hendrick Eddes, Izaak Mathews d' Waal, Jan Van der Meiden, and Cornelius Wapenaar, and I make this declaration, conscientiously believing the same to be true; and by virtue of the provisions of an act made and passed in the fifth and sixth years of the reign of his late Majesty William the Fourth, instituted an act to repeal an act of the present session of Parliament, entitled an act for the more effectual abolition of oaths and affirmations taken and made in various departments of the State, and to substitute declarations in lieu thereof, and for the more entire suppression of voluntary and extra judicial oaths and affidavits, and to make other provisions for the abolition of unnecessary oaths.

(Signed) WM. BROAD, JR.

Before me, (Signed) W. J. GENN.

We, the said Hendricks Eddes, Izaak Mathews de Waal, Jan Van der Meiden, and Cornelius Wapenaar, severally and respectively, solemnly and sincerely, declare and affirm, that the statements in the foregoing instrument of protest are true; and we severally and respectively make this solemn declaration, conscientiously believing the same to be *a* true; and by virtue of the provisions of an act, made and passed in the fifth and sixth years of the reign of his late majesty, William the fourth, instituted an act to repeal an act of the present session of Parliament, entitled an act for the more effectual abolition of oaths and affirmations, taken and made in various departments of the State, and to substitute declarations in lieu thereof, and for the more entire suppression of voluntary and extra-judicial oaths and affidavits, and to make other provisions for the abolition of unnecessary oaths.

(Signed) H. EDDES,
J. M. DE WAAL,
J. VAN DER MEYDEN,
C. WAPENAAR.

Before me,
(Signed) W. J. GENN,
Not. pub., and master extraordinary in ch'y.

Ik ondergebekendar, v. consul der Nederlanden to Falmouth, Verklaar hierdar dat her voorgaande geschrift, line ware copy "is van her protest van Hendrick Eddes, Izaak Mathews de Waal, Jan Van der Meiden, en Cornelius Wapenaar, bchoerende tot het Nederlandsch kofschip 'Venelia,' van Dordecht, betreffende schade en verlies bekomen of de vers van genremde stad naar Philadelphia, en dat deze copy" van gelyke waarde lu kraeht is, alshet origineal hynde behoorlyb nagezien en daarmede vergeliken in myne tegenswoord izherd.

Gezeven onder myne hand lu hegel, to Falmouth, dese 17th February, 1852.

[Consular seal.] (Signed) ROBT. R. BROAD,
V. cònsul.

We, the undersigned, John Eastman, late shipmaster, James Husband, surveyor to Lloyd's Register book, and Joseph Haly, master shipwright, at the joint request of Messrs. William Broad & Sons, Netherlands consuls and agents to Lloyd's, and of Hendrik Eddes, master of the Dutch galliot Venilia, of Dordrecht, did, this 31st day of January, 1852, repair to, on board, and around the said galliot, then lying in the inner harbor, in order to survey, examine, and inspect into her state and condition, and the damages she had sustained whilst prosecuting her voyage from Rotterdam to Philadelphia, with a general cargo of merchandise.

Upon such our survey, examination, and inspection, we found the bowsprit carried away in the spare shackle, and gone, together with the jib-boom and all the ropes thereunto belonging, together with the foretopmast front stays and jib stay; the head of the foretopmast carried away and gone, with foretop-gallantmast cap and rigging; the fore trusseltree and crosstree spring; the fore gaff broken, the bulwarks and rails on both sides of the quarter deck, with two stanchions and some rails and bulwarks on the poop, carried away and gone; two iron stanchions on the quarter deck broken; the triller sprung; the covering board on the quarter, the starboard side, started; the round house damaged, and several squares of glass in the skylight broken; the waterway seams and decks strained; and the fore course badly split and torn, and unworthy of repairs, and sundry running rope much chafed and damaged.

On going around the vessel outside, we discovered several sheets of zinc gone from the bottom, and about twenty feet of plank round the stern and larboard quarter requiring to be shifted, the wooden ends, butts, and seams generally strained, and in many places open.

We were then informed by the master, and part of the crew, that, at noon, the 21st instant, being then in latitude 47 28 north, longitude 26 20 west, and lying to under a storm mizzen, the wind blowing a hurricane from the W. S. W., a heavy sea broke on board, which hove the vessel on her beam ends, carried away the bowsprit, jib-boom, topmast stays, jibstay, jib and foretopmast staysail, together with all the ropes and blocks thereunto belonging; at the same time the fore

topgallantmast fell over the side, taking with it the head of the fore topmast, the fore cap, topgallant rigging, and stays, which they were under the necessity of cutting away, and thereby irrecoverably lost. At same time a quantity of water found its way into the cabin, and washed from off the deck two buckets.

We are, therefore, of opinion that the vessel, in her present state, is unseaworthy, and accordingly recommend that she be brought into the pier, in order to facilitate the repairs; that she be thoroughly caulked, from the metal sheathing upwards, together with the water ways and decks, and that she be supplied with a new bowsprit, jib-boom, fore topmast, fore topgallantmast, fore cap, new tiller, and fore gaff, a new fore course, jib, fore topmast staysail, with new fore topmast and jib stays, fore topgallant rigging and stays, and sufficient ropes and blocks to replace what has been cut away and lost; and that all the other losses and damages before particularized be repaired, replaced, and made good, in order to make the vessel efficient to prosecute her intended voyage. And we do hereby certify, that we consider the value of the Venilia, in her present damaged state and condition, to be four hundred and twenty pounds British, sterling.

Given under our hands, at Falmouth, this 31st day of January, 1852.

JOHN EASTMAN,
JAMES HUSBAND,
JOSEPH HALY.

On the 27th day of February, 1852, we, the undersigned, at the request of the aforenamed, again repaired on board the Dutch galliot Venilia, then lying in the inner harbor of Falmouth, and ready for sea, and do hereby certify, that we found her tight, staunch, and in every respect efficient and seaworthy, to proceed on her intended voyage to Philadelphia; the whole of the repairs and supplies recommended by us having been duly performed.

Given under our hands, at Falmouth, this 27th day of Feb'y, 1852.

JOHN EASTMAN,
JAMES HUSBAND,
JOSEPH HALY.

Ik ondergebeckurden, v. consul der Nederlander to Falmouth, Verklain hier doer dat de Heerer James Husband, John Eastman, and Joseph Haly, niens hared telkeningen aar voorguande documenten glaffixeed zyn aan vry bekend zyn als lekwame experten worrende in deze stad lu dat hunne hand elingen alle geloofen achten wardig hyn.

Ten bewy zen waurdan hebik deze ent suyne hand, leckening in Zegel bekrachligd, Falmouth, 27th February, 1852.

[L. S.]

ROBT. R. BROAD,
V. consul.

UNITED STATES OF AMERICA,
State of Penn'a, city of Philad'a, ss.

I, Thos. S. Crombarger, notary public for the Commonwealth of Pennsylvania, residing in the city of Philadelphia, by lawful authority

duly commissioned and sworn, do hereby certify, that the within and foregoing instrument of writing to be a true, correct, and duly compared copy of protest and surveyors' report of the galliot Venilia, to me presented.

In testimony whereof I hereunto set my hand, and affix my notarial seal, this fourth day of June, A. D. 1852.

[Notarial seal.]

THOS. S. CROMBARGER,
Notary public, No. 136 Market street, Philad'a.

Port of Philadelphia.

In pursuance of a writ, to us directed, from the honorable John K. Kane, judge of the district court of the United States, in and for the eastern district of Pennsylvania, bearing date the third day of June, 1852, and in the seventy-sixth year of the independence of the said United States, at the instance of Messrs. S. Mayer and Brother, consignees of merchandise imported in the galliot, called the Venilia, Eddes, master, lately arrived from Rotterdam, via Falmouth, England.

We, the subscribers, have diligently and carefully surveyed the following described packages, which were found to be in a damaged condition, to wit: S. M. & B., ten cases of segars, damaged fifty per cent. B. & H., sixty-six cases cheese. A. G., six do. S. M., four do. Total loss. Thirty bags of peas, damaged fifteen per cent. Occasioned in our judgments by having been wet with sea water on board, and the dampness of the hold, on the voyage of importation. Two hundred kegs herrings and sixteen do. anchovies, damaged twenty per cent. Occasioned in our judgments by loss of pickle, and having been wet with salt water on the voyage of importation. And the whole of said packages being in an unmerchantable condition, we recommend the same to be sold at public auction, for account of the concerned.

Witness our hands, June 4, 1852.

HARRISON HALL,
C. GALAGER.

Sworn to by said H. Hall, affirmed to by C. Galager, this 5th June, 1852, before me, D. B. E.

THOMAS L. KANE,
Clerk of dist. court, U. S., for eastern dist. of Penn.

UNITED STATES,
Eastern district of Pennsylvania, ss.

I certify the foregoing to be a true and faithful copy of the original filed, and now remaining among the records of the district court of the United States, in and for the eastern district of Pennsylvania, in my office.

Witness my hand and the seal of said court, at Philadelphia, this fifth day of June, A. D. 1852, and in the seventy-sixth year of the independence of the said United States.

[Seal of the dist. ct., U.S., east. dist. of Penn.]

J. BURCHARD,
For clerk district court, United States.

MANHEIM, *December* 18, 1851.

Mr. S. MAYER & BRO.

To J. WAZER.

S. M. & B. 24 pipes wine, wein, 6,834 L. pr. 1,200 gallons, *a* 90 - - - - - - - -	fs. 513 87½
A. G. D. Phil. 318 cheese, 115, 6 Kimbel Has, 2,813 lbs., 16½ - - - - - - -	464 03
B. & H. $\frac{80}{33}\frac{50}{32}$ $\frac{81}{14}\frac{03}{2}$ 65 Kiste Hus, 8,372 lbs., 11½ -	957 34
3,693 wine, 3,704 3 Coli, 12 doz. wine, 8 -	96 00
S. M. & B. 1 *a* 10 segars, 10 Risten cigars, 176,850, 315	574 50
S. M. Phil., 100⅛ herring, 100 1-16 herring, 17 ton, 15	255 00
16 sardines salted, jasger sardelen, 1 24 -	22 24
S. M. 1 *a* 4 cheese, 4 Kistoe kess, 675 lbs., 16½ -	111 22
M. & B. 1 *a* 15 cheese, 15 Kisto kess, 675 lbs., 10 -	150 00
M. G. 32 peas, sake Erbren, 2 48 - - -	89 36
A. J. No. 1, sheet lead, 24 lbs. stamol, 30 - -	12 00
S. M. & B. No. 1 covers, 1 Hist mit Delsel	
2000 pipes G. duynets - - - - -	16 00
2 per Stiegel and G. feipen - - - -	21 00
Fracht en Rotterdam - - - - -	68 00
	Frs. 3,351 46

CUSTOM-HOUSE, PHILADELPHIA,
June 2d, 2852.

I certify the foregoing to be a true copy of the original invoice on file in this office.

Given under my hand and seal of office, this 2d June, 1852.

C. M. PREVOST,
Deputy collector.

CUSTOM-HOUSE, PHILADELPHIA,
Collector's office, June 2d, 1852.

I certify this to be a true copy from the original now on file in this office.

[SEAL.]

——— ———,
Deputy collector.

No. 623. PHILADELPHIA, *June 2d*, 1852.

Manufacturers and Mechanics' Bank pay to S. & W. Welsh, or bearer, two hundred and fifty-four dollars 11 cents.

254 dolls. 11 cts. S. MAYER & BRO.

Endorsed.—Sam'l & W. Welsh, Philadelphia.

Sale of cheese, herring, &c., per ship Venilia, from Rotterdam, for account of whom it may concern, by R. Comly, auctioneer. June 4, 1852.

40	Cheese boxes, (B. & W.,)	65	1 00	- -	$65 00
41	Cheese tofs, A. G. D.	6	17 00	- -	102 00
42	Herring, kegs, S. M.	100	16 00	- -	16 00
43	Herring, kegs, S. M.	100	14 00	- -	14 00
44	Anchovies, kegs, S. M.	16	50	- -	8 00
45	Cheese, boxes, S. K.	4	1 00	- -	4 00
					$209 00
Commission paid - - - - - -					10 45
					$198 55

Copy.

Appraisement of damaged goods imported by Mayer & Bro., per brig Venilia, from Rotterdam, May, 1852.

S. M. B., twenty-four casks wine, fifty per cent., (50.)
A. G. D., $\frac{38}{38}\frac{1}{15}\frac{0}{5}$ six cases cheese, seventy-five, (75.)
B. & H., $\frac{80}{31}\frac{50}{03}\frac{3}{33}\frac{3}{42}$ sixty-five cases cheese, total worthless.
S. M. & B., $\frac{1}{10}$ ten cases segars, fifty per cent., (50.)
S. M., two hundred bbls. herring } eighty-five, [per cent.] (85,)
S. M., sixteen quarter bbls. anchovies } nearly worthless.
S. M., 1 *a* 4 four cases cheese, total worthless.
M. & B., 1 *a* 15 fifteen cases cheese,
P
M thirty-two bags peas, } fifty per cent. (50.)
Charges to be included.
Appraisers' office, Philadelphia, June 5th, 1852.

GEORGE KERN, *Examiner.*
J. C. MARTIN, *Appraiser.*

Attest: True copy from the books of appraisers' office.

J. J. BUTLER, *Clerk.*

U. S. D. C. E. D. of Pa. in admiralty.

MAYER AND BROTHER
vs.
The GALLIOT VENILIA.

On motion of libellants' proctor, the court order, that the goods of the libellants, alleged to have been damaged on the voyage of importation, whilst on board of said vessel, be exposed to public sale without injustice to either party.

MARTIN and H. M. PHILLIPS,
For libellants.

11th June, 1852.

MAYER and al.
vs.
The GALLIOT VENILIA.

It is agreed that the application, of which the annexed was a notice, was made to the court on the eleventh day of June, 1852, and refused.

MARTIN, *for libellants,*
JOHN FALLON, *for respondents.*

U. S. D. C. In admiralty.

MAYER and BRO.
vs.
The VENILIA.

DEAR SIR: You will please take notice, that we shall, to-morrow morning, apply to the court for an order of sale of the goods of the plaintiff above, damaged on the voyage of importation, to be sold at public sale, without prejudice to either party.

Your obedient servant,
J. HILL MARTIN,
Attorney for plaintiffs.

10th June, 1852.

UNITED STATES OF AMERICA,
Eastern district of Pennsylvania, sct.

I, George Plitt, clerk of the circuit court of the United States, for the eastern district of Pennsylvania, in the third circuit, do hereby certify, that the foregoing is a true and faithful copy of the entire record and proceedings in a certain plea, civil and maritime, lately depending in the said court, wherein Samuel Mayer and Henry Mayer were libellants, and the galliot Venilia, Eddes, master, was respondent.

In testimony whereof I have hereunto subscribed my name, and affixed the seal of said circuit court, at Philadelphia, this [SEAL.] twentieth day of June, A. D. 1853, and in the seventy-seventh year of the independence of the said United Sates.

GEORGE PLITT,
Clerk circuit court.